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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91166542
Party	Plaintiff HEINEKEN BROUWERIJEN B.V. HEINEKEN BROUWERIJEN B.V. Tweede Weteringplantsoen 21 Amsterdam, 1017 ZD NETHERLANDS
Correspondence Address	Jonathan Hudis Oblon, Spivak, McClelland, Maier & Neustadt, P.C. 1940 Duke Street Alexandria, VA 22314 UNITED STATES tmdocket@oblon.com, jhudis@oblon.com
Submission	Motion to Compel Discovery
Filer's Name	Jonathan Hudis
Filer's e-mail	tmdocket@oblon.com, jhudis@oblon.com
Signature	/Jonathan Hudis/
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HEINEKEN BROUWERIJEN B.V.,

V.

Applicant.

The Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

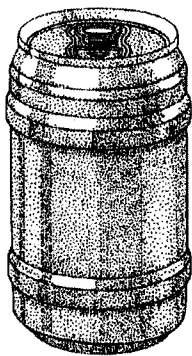
OPPOSER'S MOTION: (1) TO COMPEL DISCOVERY, (2) TO TEST THE SUFFICIENCY OF ADMISSIONS RESPONSES, (3) FOR THE ENTRY OF A PROTECTIVE ORDER, (4) TO DIRECT APPLICANT TO SUBMIT A PRIVILEGE LOG, (5) TO SUSPEND PROCEEDINGS, AND (5) TO RE-SET THE DISCOVERY AND TESTIMONY PERIODS

1. To direct Applicant to serve supplemental answers to Heineken's Interrogatories Nos. 2, 4, through 10, 13 through 15, 19 through 21, and 23 through 26;
2. To direct Applicant to serve supplemental responses to Heineken's Requests for Production Nos. 1 through 5, 7, 8, 11 through 14, 16 through 19, and 21;

3. To direct Applicant to serve its discovery documents on Opposer's counsel, for which Applicant will be reimbursed;
4. To test the sufficiency of Applicant's Requests for Admissions Nos. 21, 24, and 66 through 69;
5. To enter a Protective Order to govern the exchange of confidential discovery in the form attached as Exhibit B;
6. To direct Applicant to serve a Privilege Log;
7. To suspend proceedings pending the disposition of this motion: and
8. To re-set the parties' discovery and testimony periods after the Board's ruling on this motion, so that Heineken has not less than 120 days to conduct follow-up discovery.

Basis for Opposition

In this Opposition, Heineken asserts that the CAN Design mark of Application Serial No. 78/336,665 is likely to be confused with Heineken's CAN Design mark of Registration No. 2,262,093, in which Heineken claims ownership and priority. The marks of the parties appear as follows:



CAN Design of Opposer's
U.S. Reg. No. 2,262,093



CAN Design of Applicant's
Application Serial No. 78/336,665

Heineken also challenges the *bona fides* of Applicant's intent to use the opposed CAN Design mark, as stated in the opposed Application. Heineken further asserts that Applicant committed a fraud on the U.S. Patent and Trademark Office by making certain material misrepresentations regarding Applicant's CAN Design mark to the Examining Attorney during the prosecution of the opposed Application.

Good Faith Efforts to Resolve Discovery Disputes

Pursuant to Trademark Rule 2.120(e), on December 12, 2005, Heineken's counsel wrote to Applicant's counsel, providing a detailed critique of Applicant's discovery responses and enclosing a proposed stipulated protective order for review. Opposer's letter and the proposed protective order are attached as Exhibits A and B. The parties' counsel spoke by telephone on December 15, 2005 and January 3, 2006. On both occasions, Applicant's counsel advised that he had not received instructions in order to respond to Heineken's discovery critiques. Therefore, the parties have not been able to reach agreement on the discovery matters in dispute without the intervention of the Board.

Heineken's Discovery and Applicant's Responses

Discovery opened on September 30, 2005. On that same day, Heineken served on Applicant Opposer's first sets of Interrogatories, Requests for Production and Requests for Admissions (Exhibits C, D, and E). At Applicant's request, Heineken granted Applicant a two-week extension of time, or until November 18, 2005, to respond to this written discovery.

Applicant served its Interrogatory Answers, Responses to Production Requests, and Responses to Admissions Requests on November 18, 2005 (Exhibits F, G, and H). As noted above, on December 12, 2005 Heineken provided Applicant with a written critique of its discovery responses, and a proposed stipulated protective order (Exhibits A and B). To date,

Heineken has not received Applicant's substantive response to Heineken's critique letter and proposed protective order.

Stipulated Protective Order

In response to Heineken's written discovery (interrogatories, document requests and request for admissions), Applicant frequently withheld producing responsive documents and information on the grounds of confidentiality and that no Protective Order was yet in place. Heineken offered a proposed stipulated protective order (Exhibit B) on which it has received no comments. Further, Heineken has not received a return of the proposed protective order bearing Applicant's signature and that of Applicant's counsel. Heineken requests that the Board enter Heineken's proposed protective order (Exhibit B), so that discovery can proceed expeditiously.

The Assertion of Privilege

In several instances, Applicant withheld responsive information and documents based on a claim of privilege. However, in every instance Applicant failed to identify the particular privilege it was asserting, the information or documents withheld, or the basis for the claim of privilege in sufficient detail to permit Heineken and the Board to assess the validity of that claim. Rule 26(b)(5), Fed. R. Civ. P.

Recently, the Ninth Circuit Court of Appeals in *Burlington Northern & Santa Fe Rwy. Co. v. Kapsner*, 408 F.3d 1142, 1149 (9th Cir. 2005), had occasion to discuss that blanket discovery objections are uniformly inappropriate, and described the circumstances under which a privilege log should be provided by the party claiming privilege as the basis for withholding discovery information and/or documents:

We hold that boilerplate objections or blanket refusals inserted into a response to a *Rule 34* request for production of documents are insufficient to assert a privilege. However, we also reject a *per se* waiver rule that deems a privilege waived if a privilege log is not produced within *Rule 34*'s 30-day time limit. Instead, using the 30-day period as a default guideline, a district court should make a case-by-case determination, taking into account the following factors: **the degree to which the objection or assertion of privilege enables the litigant seeking discovery and the court to evaluate whether each of the withheld documents is privileged (where providing particulars typically contained in a privilege log is presumptively sufficient and boilerplate objections are presumptively insufficient)**; the timeliness of the objection and accompanying information about the withheld documents (where service within 30 days, as a default guideline, is sufficient); the magnitude of the document production; and other particular circumstances of the litigation that make responding to discovery unusually easy (such as, here, the fact that many of the same documents were the subject of discovery in an earlier action) or unusually hard. These factors should be applied in the context of a holistic reasonableness analysis, intended to forestall needless waste of time and resources, as well as tactical manipulation of the rules and the discovery process. They should not be applied as a mechanistic determination of whether the information is provided in a particular format. Finally, the application of these factors shall be subject to any applicable local rules, agreements or stipulations among the litigants, and discovery or protective orders. (Emphasis Added).

In this proceeding, Applicant should be directed to provide a detailed log of documents and information withheld on the grounds of any asserted privilege.

Production of Documents

Applicant withheld all responsive documents asserting that it will make them available for inspection and copying at Applicant's place of business in Ontario, Canada. Heineken asked that Applicant copy all responsive documents and send them to Opposer's counsel by overnight courier. Heineken agreed to reimburse Applicant for reasonable reproduction and courier charges. Applicant has not responded to this entreaty. Applicant should be directed to produce all relevant documents in its possession, custody or control, for which Heineken will reimburse Applicant for copying and shipment costs.

Assertion of “General Objections”

At the beginning of Applicant’s Interrogatory Answers and Document Responses, it asserts a myriad of “General Objections” without tying such objections specifically to an interrogatory question or production request. This is wholly improper, and Applicant’s General Objections should be ignored by the Board when ruling on Heineken’s instant discovery motion. *See Generally*, TBMP §§ 405.04(b), 406.04(b).

Applicant’s Answers to Opposer’s First Set of Interrogatories

Applicant’s Answers to Opposer’s First Set of Interrogatories are deficient in several respects. Certain interrogatory answers simply fail to provide any responsive information, instead indicating that Applicant is still investigating the matter (Interrogatories Nos. 2 and 4). Certain interrogatory answers are deficient because Applicant merely states that it has not used Applicant’s Mark in commerce, even though the interrogatory calls for responsive information regarding Applicant’s future plans to use its mark (Interrogatories Nos. 6 – 10, 14 – 15, 20, 21, and 25). Other interrogatory answers improperly assert the attorney-client privilege or work-product immunity in conclusory terms without stating sufficient information for the Board to determine the basis for the claim of privilege (Interrogatories Nos. 19 and 24). Other interrogatory answers simply fail to provide the requested information, sometimes on the basis of improper objections (Interrogatory No. 23). Heineken’s specific interrogatories and Applicant’s answers to them are set out below:

INTERROGATORY NO. 2: Identify each person responsible for the actual and/or intended promotion, distribution, and/or sale of Applicant’s Products under Applicant’s Mark.

RESPONSE TO INTERROGATORY NO. 2: Applicant is still investigating in order to determine the answer to this interrogatory.

INTERROGATORY NO. 4: Identify each person who conceived of Applicant’s Mark for use by Applicant.

RESPONSE TO INTERROGATORY NO. 4: Applicant is still investigating in order to determine the answer to this interrogatory.

In response to Interrogatories Nos. 2 and 4, Applicant merely states that it is still investigating the answer to each interrogatory. Applicant should be directed to provide fully responsive answers to each of these interrogatories in supplemental responses. TBMP §§414(4), (8), (12).

INTERROGATORY NO. 5: Identify, by common commercial descriptive name, each product actually and/or intended to be offered for sale, advertised, and/or promoted by or on behalf of Applicant bearing Applicant's Mark.

RESPONSE TO INTERROGATORY NO. 5: Brewed alcoholic beverages, in the nature of ale.

Heineken's Interrogatory No. 5 requested the "common commercial descriptive name" of the products with which Applicant's Mark has been or would be used. Applicant responded "brewed alcoholic beverages *in the nature of* ale." This answer is not fully responsive or at least is ambiguous. Are the only responsive goods "ale" or will the mark be used with any products other than ale? Applicant should be directed to identify the common commercial descriptive name for all such products in a supplemental response. TBMP § 414(11), n. 237 (and cases cited therein).

INTERROGATORY NO. 6: For each product identified in answer to Interrogatory No. 5, state the date or anticipated date of first use anywhere, and describe the circumstances surrounding such use.

RESPONSE TO INTERROGATORY NO. 6: Applicant objects to this Interrogatory as it calls for information on Applicant's future plans. Notwithstanding this and the General Objections, Applicant has not used Applicant's Mark in commerce.

INTERROGATORY NO. 7: For each product identified in answer to Interrogatory No. 5, state the date or anticipated date of first use in commerce, and describe the circumstances surrounding such use.

RESPONSE TO INTERROGATORY NO. 7: Applicant objects to this Interrogatory as it calls for information on Applicant's future plans. Notwithstanding this and the General Objections, Applicant has not used Applicant's Mark in commerce.

INTERROGATORY NO. 8: For each product identified in answer to Interrogatory No. 5, state, by calendar quarter, the dollar volume budgeted and/or expended by Applicant to promote Applicant's Mark in connection therewith.

RESPONSE TO INTERROGATORY NO. 8: Applicant objects to this Interrogatory as it calls for information on Applicant's future plans. Applicant further objects to this Interrogatory as requiring disclosures of confidential and proprietary information. Notwithstanding this and the General Objections, Applicant has not used Applicant's Mark in commerce.

INTERROGATORY NO. 9: For each product identified in answer to Interrogatory No. 5, state, by calendar quarter and by each state of the United States, the approximate income anticipated and/or received to date from sales of Applicant's Products bearing Applicant's Mark.

RESPONSE TO INTERROGATORY NO.9: Applicant has not used Applicant's Mark in commerce.

INTERROGATORY NO. 10: Identify representative examples of each different promotional document and item used or considered for use by Applicant in connection with the promotion, distribution, and/or sale of Applicant's Products bearing Applicant's Mark.

RESPONSE TO INTERROGATORY NO. 10: Applicant objects to this Interrogatory as it calls for information on Applicant's future plans. Notwithstanding this and the General Objections, Applicant has not used Applicant's Mark in commerce.

INTERROGATORY NO. 14: Identify (by title, publisher, issue date, page number, and any other relevant designation), each printed and/or electronic publications in which Applicant has promoted and/or plans to promote Applicant's Products in connection with Applicant's Mark.

RESPONSE TO INTERROGATORY NO. 14: Applicant has not used Applicant's Mark in commerce.

INTERROGATORY NO. 15: Identify (by name, date and location) each trade show, trade fair, trade convention or other promotional trade venue in which Applicant has promoted and/or plans to promote its products in connection with Applicant's Mark.

RESPONSE TO INTERROGATORY NO. 15: Applicant has not used Applicant's Mark in commerce.

INTERROGATORY NO. 20: Identify each channel of distribution and each geographical area of trade within which Applicant's Products are and/or are intended to be promoted, distributed, and/or sold in connection with Applicant's Mark.

RESPONSE TO INTERROGATORY NO. 20: Applicant has not yet used Applicant's Mark in commerce. Applicant directs Opposer to its website www.sleeman.com and other publicly available documents in response to this inquiry.

INTERROGATORY NO. 21: Identify each person who, and company that, has participated or participates in creating and/or distributing advertisements or marketing materials in the United States for Applicant's Products in connection with Applicant's Mark, and state the period of time during which each company that, and/or person who, participated or participates in such activities.

RESPONSE TO INTERROGATORY NO. 21: Applicant has not used Applicant's Mark in commerce.

INTERROGATORY NO. 25: Identify each different manner that Applicant's Mark has been used and/or is intended to be used (i.e., on or as part of containers (e.g., cans) for Applicant's Products, on packaging, on signage, on web pages, on printed advertising, and/or on promotional items).

RESPONSE TO INTERROGATORY NO. 25: Applicant's Mark has not been used in commerce.

Each of the foregoing interrogatories requested information about not only Applicant's *current* use of Applicant's Mark, but also Applicant's *anticipated future use* of the mark and items associated with that future use. In each case, Applicant objected on the grounds that the Interrogatory calls for Applicant's future plans. This is not a valid basis of objection, particularly for an Application filed based on an intent-to-use the mark in commerce.

In each case, Applicant also merely stated that Applicant has not used Applicant's Mark in commerce. This fails to respond to that part of each Interrogatory which requests information about Applicant's future use or plans for use of the mark.

Applicant has improperly withheld relevant information responsive to each of these interrogatories. Any concerns about confidentiality are addressed in Heineken's proposed protective order. Applicant should be directed to provide all such information in a supplemental response. TBMP § 414(8)

INTERROGATORY NO. 13: If Applicant knew of Opposer's Mark identified in the Notice of Opposition prior to Applicant's intent and/or decision to adopt, use, or file for federal registration of Applicant's Mark, state whether Applicant considered the issue of, and/or received any opinions, advice, and/or counsel regarding, a likelihood of confusion between Applicant's Mark and Opposer's Mark.

RESPONSE TO INTERROGATORY NO. 13: Applicant objects to this interrogatory on the grounds that it calls for information protected by privilege.

INTERROGATORY NO. 24: State the basis upon which Applicant believed, in applying for registration of Applicant's Mark based upon Applicant's *bona fide* intent to use the mark in commerce, that no other person had a right to use Applicant's Mark in commerce either in identical form thereof or in such near resemblance thereto as to be likely to cause confusion, mistake, and/or deception.

RESPONSE TO INTERROGATORY NO. 24: Applicant objects to this interrogatory on the grounds that it calls for information protected by the attorney-client or work product privilege.

Applicant refused to produce any information responsive to Interrogatory Nos. 13 and 24 on the grounds of one or more privileges. Applicant should be required to state the basis for any claim of privilege in sufficient detail so as to permit the Board to adjudicate whether the claim of

privilege is valid. Applicant should be directed to provide all information germane to the claim of privilege at this time (such as in a privilege log suggested above). To the extent that any information responsive to Interrogatory Nos. 13 and 24 is not privileged, Applicant should be directed to provide all such information should be provided in supplemental responses. TBMP § 414(19).

INTERROGATORY NO. 19: Identify each agreement, including, without limitation, each assignment, license, authorization, permission, and/or consent, entered into by Applicant regarding Applicant's Mark and/or Applicant's Products.

RESPONSE TO INTERROGATORY NO. 19: Applicant objects to this interrogatory on the grounds that it is overly broad, burdensome, ambiguous, and requests information outside the scope of these proceedings that is not likely to lead to discoverable information. Applicant also objects to this interrogatory to the extent it requires disclaimer of confidential, proprietary or privileged information.

Applicant refused to produce any information or documents responsive to Interrogatory 19 on over breadth grounds, etc. However, Applicant failed to state precisely how or why the interrogatory is "overbroad, burdensome, and ambiguous." Furthermore, Applicant's claim that the information requested is not discoverable is without foundation. The information is relevant to many of the issues germane to this proceeding, including the similarity of the parties' goods, channels of trade, conditions of sale, and consumers for the goods, among others. TBMP §§ 414(3), (5), (8), and (16). As for Applicant's claim of confidentiality, Heineken offered a proposed stipulated protective order as discussed above. Applicant should be directed to produce all responsive information in a supplemental response.

INTERROGATORY NO. 20: Identify each channel of distribution and each geographical area of trade within which Applicant's Products are and/or are intended to be promoted, distributed, and/or sold in connection with Applicant's Mark.

RESPONSE TO INTERROGATORY NO. 20: Applicant has not yet used Applicant's Mark in commerce. Applicant directs Opposer to its website www.sleeman.com and other publicly available documents in response to this inquiry.

Although this interrogatory requests that Applicant identify the channels of distribution and geographical areas of trade, Applicant has merely referred Opposer to Applicant's website.

Applicant is required to produce fully responsive information to this Interrogatory, and cannot merely suggest that Heineken track down that information on the Internet. TBMP § 414(16). Applicant should be directed to provide a fully responsive answer to the Interrogatory in a supplemental response.

INTERROGATORY NO. 23: State the basis for Applicant's *bona fide* intent to use Applicant's Mark in commerce on the date Applicant's representative signed the application that ultimately was assigned Serial Number 78/336,665 by the U.S. Patent and Trademark Office.

RESPONSE TO INTERROGATORY NO. 23: Applicant objects to this interrogatory on the grounds that it calls for a legal determination as to the "basis for Applicant's *bona fide* intent to use."

Applicant's objection to Interrogatory No. 23 is specious. The interrogatory requires Applicant to state the factual basis for Applicant's claimed *bona fide* intent to use Applicant's Mark, *See, e.g., Lane Ltd. v. Jackson Int'l Trading Co.*, 33 USPQ2d 1351, 1352 (TTAB 1994); *Commodore Elecs. Ltd. v. CBM Kabushiki Kaisha*, 26 USPQ2d 1503, 1504 (TTAB 1993). The Interrogatory is entirely proper and Applicant should be directed to respond to it fully in a supplemental response.

INTERROGATORY NO. 26: Identify each person who supplied documents or information for, or who has participated in responding to, these Interrogatories, Opposer's First Request for Production of Documents and Things, and/or Opposer's First Requests for Admissions.

RESPONSE TO INTERROGATORY NO. 26: Dan Rogozynski and Kenneth McKay.

In answering Interrogatory No. 26, Applicant merely provided the names of two people, but withheld identifying information such as their title, address, employer and the like that is plainly required by the interrogatory. Applicant should be directed to provide all such information in a supplemental response – so that Heineken can appropriately prepare deposition notices.

Applicant's Responses to Opposer's First Request for Production of Documents and Things

REQUEST FOR PRODUCTION NO. 1: Produce each document and thing that Applicant identified in responding to Opposer's First Set of Interrogatories.

RESPONSE TO REQUEST FOR PRODUCTION NO. 1: To the best of Applicant's knowledge no documents were identified in responding to Opposer's First Set of Interrogatories.

Applicant's responses to Opposer's First Set of Interrogatories were inadequate as outlined above. If Applicant identifies documents in its supplemental interrogatory answers, it should be directed to produce those documents with its supplemental document responses.

REQUEST FOR PRODUCTION NO. 2: Produce each document and thing forming the basis for the denial, in whole or in part, with respect to each of Applicant's responses to Opposer's First Request for Admissions.

RESPONSE TO REQUEST FOR PRODUCTION NO. 2: Applicant objects to this request on the basis that it is overly broad and burdensome. Notwithstanding the general and specific objections, certain documents identified in Opposer's First Request for Admissions and responsive to this request are already in the possession of Opposer.

Applicant's objection that Request for Production No. 2 is overly broad and burdensome is conclusory and fails to state how and why this is so. Clearly, Applicant has withheld production of responsive documents. Additionally, Applicant's response that some of the responsive documents may already be in Opposer's possession is insufficient. Applicant should be directed to produce all responsive documents as part of a supplemental response.

REQUEST FOR PRODUCTION NO. 3: Produce each document and thing regarding the creation, selection, and/or adoption or intended adoption of Applicant's Mark by or on behalf of Applicant.

RESPONSE TO REQUEST FOR PRODUCTION NO. 3: Applicant objects to this request to the extent it calls for the production of documents protected by the attorney-client or work-product privileged. Notwithstanding the general and specific objections, any relevant, nonprivileged documents responsive to this request will be made available upon entry of a suitable protective order.

Applicant withheld responsive documents on the basis of claimed privilege, but failed to identify the documents with sufficient information to permit Heineken or the Board to assess the validity of the privilege claim. As discussed earlier, Applicant should be directed to provide a privilege log of all documents withheld on the grounds of privilege. The documents called for in

Production Request No. 3 are discoverable. TBMP § 414(4). As for Applicant's confidentiality objection, Heineken offered a proposed stipulated protective order for Applicant's review and execution.

REQUEST FOR PRODUCTION NO. 4: Produce each document and/or thing regarding any investigation such as a service mark, trademark, trade name, Internet name, or corporate name search regarding Applicant's actual and/or intended adoption, use, and/or application for federal registration of Applicant's Mark.

RESPONSE TO REQUEST FOR PRODUCTION NO. 4: Applicant objects to this request to the extent that it is overly broad and unduly burdensome. Notwithstanding the general and specific objections, any relevant, nonprivileged documents responsive to this request will be made available as discussed herein.

REQUEST FOR PRODUCTION NO. 5: Produce each document and thing regarding the date and/or anticipated date of first use anywhere, and the date and/or anticipated date of first use in commerce, of Applicant's Mark by or on behalf of Applicant.

RESPONSE TO REQUEST FOR PRODUCTION NO. 5: Applicant objects that the language of this request is overly broad and unduly burdensome. Notwithstanding the general and specific objections, Applicant has not used Applicant's Mark in commerce. To the extent that any relevant, nonprivileged documents meet this request over these objections they will be made available as discussed herein.

In response to Production Requests Nos. 4 and 5, Applicant failed to state how each request is overly broad or burdensome. Also, Applicant did not identify which documents it will produce and which documents it refuses to produce. Applicant should be obligated to produce all documents responsive to these Requests. Applicant failed to produce any responsive documents, which are discoverable. TBMP §§ 414(5), (6). Applicant should be directed to produce all responsive documents.

REQUEST FOR PRODUCTION NO. 7: Produce each document and thing regarding the geographical areas and channels of trade in which Applicant's Mark has been used, is used, and/or is proposed to be used.

RESPONSE TO REQUEST FOR PRODUCTION NO. 7: Applicant objects to this request on the bases that it is overly broad and unduly burdensome and also pertains to geographic areas and channels of trade outside the United States and therefore not relevant to this proceeding. Notwithstanding the general and specific objections, any relevant, nonprivileged documents responsive to this request will be made available upon entry of a suitable protective order.

REQUEST FOR PRODUCTION NO. 8: Produce each document and thing regarding each actual and/or intended assignment, consent, authorization, license and/or permission to use Applicant's Mark and/or Applicant's Products, including each modified version thereof.

RESPONSE TO REQUEST FOR PRODUCTION NO. 8: Applicant has not used Applicant's Mark in commerce nor has it assigned, consented, authorized, licensed, or permitted others to use Applicant's Mark in the United States. Therefore there are no relevant documents of this type to produce. To the extent that this request ask for documents and things regarding each actual and/or intended assignment, consent, authorization, license, and/or permission to use Applicant's Products, Applicant objects on the grounds that it is overly broad, unduly burdensome, and not directed toward information likely to lead to discoverable subject matter. Notwithstanding the general and specific objections, any relevant, nonprivileged documents responsive to this request will be made available upon entry of a suitable protective order.

REQUEST FOR PRODUCTION NO. 12: Produce each document and/or thing regarding types of customers with whom Applicant does or intends to do business, and the ultimate consumers to whom Applicant offers or intends to offer Applicant's Products that bear or will bear Applicant's Mark.

RESPONSE TO REQUEST FOR PRODUCTION NO. 12: Applicant objects to this request on the basis that it is overly broad and burdensome. Notwithstanding the general and specific objections, any relevant, nonprivileged documents responsive to this request will be made available upon entry of a suitable protective order.

REQUEST FOR PRODUCTION NO. 16: Produce each document and/or thing regarding the date and circumstances under which Applicant became aware of the use and/or registration of Opposer's Mark prior to Applicant's intention or decision to adopt, use, or apply for federal registration of Applicant's Mark.

RESPONSE TO REQUEST FOR PRODUCTION NO. 16: Applicant objects to this request on the basis that it is overly broad and burdensome. Notwithstanding the general and specific objections, any relevant, nonprivileged documents responsive to this request will be made available upon entry of a suitable protective order.

REQUEST FOR PRODUCTION NO. 17: Produce each document and/or thing regarding each action taken by Applicant in response to its awareness of Opposer's Mark.

RESPONSE TO REQUEST FOR PRODUCTION NO. 17: Applicant objects to this request on the basis that it is overly broad, burdensome, vague and ambiguous. Any relevant, nonprivileged documents responsive to this request will be made available upon entry of a suitable protective order.

Applicant objected to Heineken's Requests for Production Nos. 7, 8, 12, 16 and 17 on the grounds that the requests are overly broad and burdensome, but failed to state how the requests are overly broad or burdensome, and did not identify which documents it will produce and which documents it refuses to produce. Opposer is obligated to produce all documents responsive to these requests. TBMP §§ 414(3), (4), (6), (8), (9), (16), and (19). Applicant should be directed to produce all responsive documents to the above-mentioned Requests for Production.

REQUEST FOR PRODUCTION NO. 11: Produce each document and/or thing regarding each print and/or electronic media publication in which Applicant has advertised or promoted, is advertising or promoting, or plans to advertise or promote its Applicant's Products in connection with Applicant's Mark.

RESPONSE TO REQUEST FOR PRODUCTION NO. 11: Applicant objects to this request to the extent that it calls for Applicant's future plans. As to print and/or electronic media publications in which Applicant has advertised or promoted or is advertising or promoting, Applicant is not presently aware of any relevant documents responsive to this request. Applicant has not used Applicant's Mark in commerce.

Applicant objected to this Request in part on the grounds that it calls for Applicant's future plans. As Heineken offered a proposed protective order, this objection lacks merit. TBMP § 414(8). Applicant improperly withheld relevant responsive documents and should be directed to produce all such documents.

REQUEST FOR PRODUCTION NO. 13: Produce copies of each survey, market research test, demographic or consumer profile study, and/or focus group inquiry regarding ultimate purchasers or potential purchasers of Applicant's Products actually or intended to be sold, offered for sale, advertised or promoted under Applicant's Mark, including the results thereof.

RESPONSE TO REQUEST FOR PRODUCTION NO. 13: Any relevant, nonprivileged documents responsive to this request will be made available upon entry of a suitable protective order. Applicant is not presently aware of any documents responsive to this request.

REQUEST FOR PRODUCTION NO. 14: Produce each document and/or thing regarding the dollar value of Applicant's actual and/or projected sales of products that bear or will bear Applicant's Mark since the date of first use or intended first use of the mark.

RESPONSE TO REQUEST FOR PRODUCTION NO. 14: Applicant has not used Applicant's Mark in commerce, and, as such, Applicant is not aware of any relevant documents responsive to this request.

REQUEST FOR PRODUCTION NO. 18: Produce each comparison study, survey, market research test, and each document and/or thing thereto related, including results thereof, regarding the actual and/or intended advertisements, promotions, distributions, and/or sales of Applicant's Products in connection with Applicant's Mark and the advertisements, promotions, distributions, and/or sales of Opposer's Products in connection with Opposer's Mark, including, without limitation, those regarding actual confusion, likelihood of confusion, initial interest (pre-sale) confusion, and/or deception as to the source of Applicant's Products and/or Opposer's Products.

RESPONSE TO REQUEST FOR PRODUCTION NO. 18: Any relevant, nonprivileged documents responsive to this request will be made available upon entry of a suitable protective order. Applicant is not presently aware of any documents responsive to this request.

REQUEST FOR PRODUCTION NO. 19: Produce each document and/or thing regarding each instance in which a person has been confused, mistaken, and/or deceived as to the source of Applicant's Products advertised, promoted, offered for sale, and/or sold under Applicant's Mark, and the source of Opposer's Products advertised, promoted, offered for sale, and/or sold under Opposer's Mark.

RESPONSE TO REQUEST FOR PRODUCTION NO. 19: Any relevant, nonprivileged documents responsive to this request will be made available upon entry of a suitable protective order. Applicant is not presently aware of any documents responsive to this request.

REQUEST FOR PRODUCTION NO. 21: Produce each document regarding a charge of infringement brought by Applicant against another person or brought by another person against Applicant regarding the use and/or intended use of Applicant's Mark.

RESPONSE TO REQUEST FOR PRODUCTION NO. 21: Any relevant, nonprivileged documents responsive to this request will be made available upon entry of a suitable protective order. Applicant is not presently aware of any documents responsive to this request.

Applicant objected to Heineken's Production Request No. 14 claiming that because Applicant has not used its mark in commerce it is not aware of any relevant responsive documents. Applicant's objection and response ignore that the Request seeks documents regarding the projected sales of products that *will bear* Applicant's Mark. TBMP § 414(18). Applicant should be directed to produce all responsive documents and materials in a supplemental response.

In responses to Requests Nos. 13, 14, 18, 19, and 21, Applicant stated that it is not presently aware of any responsive documents. To the extent Applicant becomes aware of any responsive documents up to and including the opening of the parties' testimony periods, it should supplement its responses and produce all such documents in accordance with Rule 26(e), Fed. R. Civ. P.

Applicant's Responses to Heineken's First Requests for Admissions

REQUEST FOR ADMISSIONS NO. 21: Admit that Applicant knew about the use of Opposer's Mark before adopting Applicant's Mark.

RESPONSE TO REQUEST FOR ADMISSIONS NO. 21: At this time, Applicant is without sufficient information to admit or deny, and so Applicant denies this request.

REQUEST FOR ADMISSIONS NO. 24: Admit that Applicant knew about the use of Opposer's Mark before filing its application to federally register Applicant's Mark.

RESPONSE TO REQUEST FOR ADMISSION NO. 24: At this time Applicant is without sufficient information to admit or deny, and so Applicant denies this request.

Although Applicant claims that it is without sufficient information to admit or deny its knowledge before adopting its mark or filing its application to register its mark, Applicant plainly can investigate and determine that knowledge, which it is required to do. Rule 36(a), Fed. R. Civ. P., ¶ 2. Applicant should be directed to fully respond to these Requests by admitting or denying them in supplemental responses.

REQUEST FOR ADMISSION NO. 65: Admit that Applicant's Products bearing Applicant's Mark are not sold in cans shaped like a beer barrel.

RESPONSE TO REQUEST FOR ADMISSION NO. 65: Applicant objects to this request on the basis that it is nonsensical. Applicant's Mark is the subject of an intent-to-use application and is for a two-dimensional mark. Applicant's Products may or may not "bear" the mark. Subject to this and the General Objections, Applicant denies this request.

REQUEST FOR ADMISSION NO. 66: Admit that Exhibit 2, attached hereto, is not a two-dimensional representation of a container for Applicant's Product bearing Applicant's Mark.

RESPONSE TO REQUEST FOR ADMISSION NO. 66: Subject to the General Objections, Applicant also objects to this request as being nonsensical for the reasons set forth in the response to Request for Admission No. 65 above.

REQUEST FOR ADMISSION NO. 67: Admit that Exhibit 2, attached hereto, is a two-dimensional representation of a container for Applicant's Product bearing Applicant's Mark.

RESPONSE TO REQUEST FOR ADMISSION NO. 67: Subject to the General Objections, Applicant also objects to this request as being nonsensical for the reasons set forth in the response to Request for Admission No. 65 above.

REQUEST FOR ADMISSION NO. 68: Admit that the shape of the can depicted in Exhibit 2 is shaped like a beer barrel.

RESPONSE TO REQUEST FOR ADMISSION NO. 68: Subject to the General Objections, Applicant also objects to this request as being nonsensical for the reasons set forth in the response to Request for Admission No. 65 above.

REQUEST FOR ADMISSION NO. 69: Admit that the shape of the container depicted in Exhibit 2 is shaped like a beer barrel.

RESPONSE TO REQUEST FOR ADMISSION NO. 69: Subject to the General Objections, Applicant also objects to this request as being nonsensical for the reasons set forth in the response to Request for Admission No. 65 above.

Applicant failed to adequately respond to Admissions' Requests Nos. 66 through 69, and should be directed to respond to each of the requests by admitting or denying them in accordance with Rule 36, Fed. R. Civ. P. Whether Applicant's applied for CAN Design is in use is

irrelevant to the inquires of Admission Requests Nos. 66-69 that require Applicant to characterize its own design mark.

Request for Suspension of Proceedings

Pursuant to Trademark Rule 2.120(e)(2), Heineken requests that the Board suspend proceedings pending the disposition of this motion.

Request for the Re-Setting of Discovery and Trial Dates

Heineken has been diligent in propounding written discovery early in the parties' discovery period. Applicant has not served any written discovery thus far in this proceeding. Applicant's discovery evasions and delays have denied Heineken adequate time to take follow-up discovery, such as further written discovery and/or discovery depositions. Heineken requests that the Board re-set the parties' discovery and testimony periods after the Board's ruling on this motion, so that Heineken has not less than 120 days to conduct follow-up discovery. TBMP §§ 403.04 and 403.05(a).

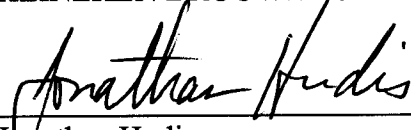
Conclusion

For the foregoing reasons, Heineken requests that this motion be granted in its entirety.

Respectfully submitted,

HEINEKEN BROUWERIJEN B.V.

By: _____


Jonathan Hudis
Oblon, Spivak, McClelland,
Maier & Neustadt, P.C.
1940 Duke Street
Alexandria, Virginia 22314
(703) 413-3000
fax (703) 413-2220
e-mail: tmdocket@oblon.com

Date: January 13, 2006

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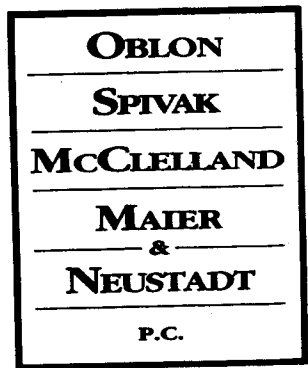
CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing **OPPOSER'S MOTION: (1) TO COMPEL DISCOVERY, (2) TO TEST THE SUFFICIENCY OF ADMISSIONS RESPONSES, (3) FOR THE ENTRY OF A PROTECTIVE ORDER, (4) TO DIRECT APPLICANT TO SUBMIT A PRIVILEGE LOG, (5) TO SUSPEND PROCEEDINGS, AND (5) TO RE-SET THE DISCOVERY AND TESTIMONY PERIODS** was served on counsel for Applicant, this 13th day of January, 2006, by sending same via First Class mail, postage prepaid, to:

Jeffrey L. Van Hoosear
KNOBBE MARTENS OLSON & BEAR LLP
14th Floor
2040 Main Street
Irvine, CA 92614

_____

EXHIBIT A



December 12, 2005
Via Facsimile

ATTORNEYS AT LAW

JONATHAN HUDIS
(703) 412-7047
JHUDIS@OBLON.COM

Jeffrey L. Van Hoosear, Esquire
KNOBBE MARTENS OLSON & BEAR LLP
14th Floor
2040 Main Street
Irvine, CA 92614

Re: *Heineken Brouwerijen B.V. v.*
The Sleeman Brewing & Malting Co. Ltd.
Opposition No.: 91/166,542
Our Ref: 274098US-229137-261397-69

Dear Jeff:

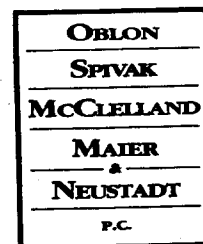
We have reviewed Applicant's Responses to Opposer's First Set of Interrogatories, Opposer's First Requests for Production of Documents and Things and First Request for Admissions. Applicant's responses are deficient in many respects. We write in a good faith effort to resolve these discovery disputes before bringing them before the Board for resolution as required by Trademark Rule 2.120(e).

Stipulated Protective Order

In response to Heineken's written discovery (interrogatories, document requests and request for admissions), Applicant frequently withheld producing responsive documents and information on the grounds that no Protective Order is yet in place. We enclose with this letter a proposed Stipulated Protective Order. Please review this proposed Order and send me any comments on or before December 15, 2005. Otherwise, if the Order is acceptable as written, please complete and sign it, and return it to me for countersignature and filing with the Board.

The Assertion of Privilege

Applicant withheld responsive information and documents based on a claim of privilege. However, in every instance Applicant failed to identify the particular privilege it is asserting, the information or documents withheld, or the basis for the claim of privilege in sufficient detail to permit Heineken and the Board to assess the validity of that claim. Please provide at this time a detailed log of documents and information withheld on the grounds of any asserted privilege.



Production of Documents

Applicant withheld all responsive documents asserting that it will make them available for inspection and copying at Applicant's place of business in Ontario, Canada. We ask that you please copy all responsive documents and send them to me by overnight courier at this time. We agree to reimburse Applicant for reasonable reproduction and courier charges.

Applicant's Responses to Opposer's First Set of Interrogatories

Applicant's Responses to Opposer's First Set of Interrogatories are deficient in several respects. Certain interrogatory answers simply fail to provide any responsive information, instead indicating that Applicant is still investigating the matter (Interrogatories Nos. 2 and 4). Certain interrogatory answers are deficient because Applicant merely stated that it has not used Applicant's Mark in commerce, even though the interrogatory calls for responsive information regarding Applicant's future plans to use its mark (Interrogatories Nos. 6 – 10, 14 – 15, 20, 21, and 25). Other interrogatory answers improperly assert the attorney-client privilege or work-product immunity in conclusory terms without stating sufficient information for the Board to determine the basis for the claim of privilege (Interrogatories Nos. 19 and 24). Other interrogatory answers simply fail to provide the requested information, sometimes on the basis of improper objections (Interrogatory No. 23). We address these interrogatories and the answers to them below:

Interrogatory Nos. 2 and 4

INTERROGATORY NO. 2: Identify each person responsible for the actual and/or intended promotion, distribution, and/or sale of Applicant's Products under Applicant's Mark.

RESPONSE TO INTERROGATORY NO. 2: Applicant is still investigating in order to determine the answer to this interrogatory.

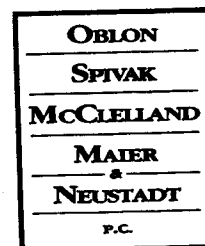
INTERROGATORY NO. 4: Identify each person who conceived of Applicant's Mark for use by Applicant.

RESPONSE TO INTERROGATORY NO. 4: Applicant is still investigating in order to determine the answer to this interrogatory.

In response to Interrogatories Nos. 2 and 4, Applicant merely states that it is still investigating the answer to each interrogatory. Please provide a fully responsive answer to each of these interrogatories in a supplemental response.

INTERROGATORY NO. 5: Identify, by common commercial descriptive name, each product actually and/or intended to be offered for sale, advertised, and/or promoted by or on behalf of Applicant bearing Applicant's Mark.

RESPONSE TO INTERROGATORY NO. 5: Brewed alcoholic beverages, in the nature of ale.



Interrogatory 5 requested the "common commercial descriptive name" of the products with which Applicant's Mark has been or would be used. Applicant responded "Brewed alcoholic beverages in the nature of ale." This answer is not fully responsive or at least is ambiguous. Are the only responsive goods "ale" or will the mark be used with any products other than ale. Please identify the common commercial descriptive name for all such products in a supplemental response.

INTERROGATORY NO. 6: For each product identified in answer to Interrogatory No. 5, state the date or anticipated date of first use anywhere, and describe the circumstances surrounding such use.

RESPONSE TO INTERROGATORY NO. 6: Applicant objects to this Interrogatory as it calls for information on Applicant's future plans. Notwithstanding this and the General Objections, Applicant has not used Applicant's Mark in commerce.

INTERROGATORY NO. 7: For each product identified in answer to Interrogatory No. 5, state the date or anticipated date of first use in commerce, and describe the circumstances surrounding such use.

RESPONSE TO INTERROGATORY NO. 7: Applicant objects to this Interrogatory as it calls for information on Applicant's future plans. Notwithstanding this and the General Objections, Applicant has not used Applicant's Mark in commerce.

INTERROGATORY NO. 8: For each product identified in answer to Interrogatory No. 5, state, by calendar quarter, the dollar volume budgeted and/or expended by Applicant to promote Applicant's Mark in connection therewith.

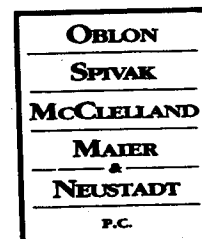
RESPONSE TO INTERROGATORY NO. 8: Applicant objects to this Interrogatory as it calls for information on Applicant's future plans. Applicant further objects to this Interrogatory as requiring disclosures of confidential and proprietary information. Notwithstanding this and the General Objections, Applicant has not used Applicant's Mark in commerce.

INTERROGATORY NO. 9: For each product identified in answer to Interrogatory No. 5, state, by calendar quarter and by each state of the United States, the approximate income anticipated and/or received to date from sales of Applicant's Products bearing Applicant's Mark.

RESPONSE TO INTERROGATORY NO.9: Applicant has not used Applicant's Mark in commerce.

INTERROGATORY NO. 10: Identify representative examples of each different promotional document and item used or considered for use by Applicant in connection with the promotion, distribution, and/or sale of Applicant's Products bearing Applicant's Mark.

RESPONSE TO INTERROGATORY NO. 10: Applicant objects to this Interrogatory as it calls for information on Applicant's future plans. Notwithstanding this and the General Objections, Applicant has not used Applicant's Mark in commerce.



INTERROGATORY NO. 14: Identify (by title, publisher, issue date, page number, and any other relevant designation), each printed and/or electronic publications in which Applicant has promoted and/or plans to promote Applicant's Products in connection with Applicant's Mark.

RESPONSE TO INTERROGATORY NO. 14: Applicant has not used Applicant's Mark in commerce.

INTERROGATORY NO. 15: Identify (by name, date and location) each trade show, trade fair, trade convention or other promotional trade venue in which Applicant has promoted and/or plans to promote its products in connection with Applicant's Mark.

RESPONSE TO INTERROGATORY NO. 15: Applicant has not used Applicant's Mark in commerce.

INTERROGATORY NO. 20: Identify each channel of distribution and each geographical area of trade within which Applicant's Products are and/or are intended to be promoted, distributed, and/or sold in connection with Applicant's Mark.

RESPONSE TO INTERROGATORY NO. 20: Applicant has not yet used Applicant's Mark in commerce. Applicant directs Opposer to its website www.sleeman.com and other publicly available documents in response to this inquiry.

INTERROGATORY NO. 21: Identify each person who, and company that, has participated or participates in creating and/or distributing advertisements or marketing materials in the United States for Applicant's Products in connection with Applicant's Mark, and state the period of time during which each company that, and/or person who, participated or participates in such activities.

RESPONSE TO INTERROGATORY NO. 21: Applicant has not used Applicant's Mark in commerce.

INTERROGATORY NO. 25: Identify each different manner that Applicant's Mark has been used and/or is intended to be used (i.e., on or as part of containers (e.g., cans) for Applicant's Products, on packaging, on signage, on web pages, on printed advertising, and/or on promotional items).

RESPONSE TO INTERROGATORY NO. 25: Applicant's Mark has not been used in commerce.

Each of the foregoing interrogatories requested information about not only Applicant's current use of Applicant's Mark, but also Applicant's anticipated future use of the mark and items associated with that future use. In each case, Applicant objected on the grounds that the Interrogatory calls for Applicant's future plans. This is not a valid basis of objection, particularly for an Application filed based on an intent-to-use the mark in commerce.

In each case, Applicant also has merely stated that Applicant has not used Applicant's Mark in commerce. This fails to respond to that aspect of each Interrogatory requesting information about Applicant's future use or plans for use of the mark.



Applicant has improperly withheld relevant information responsive to each of these interrogatories. We request that Applicant provide all such information in a supplemental response.

INTERROGATORY NO. 13: If Applicant knew of Opposer's Mark identified in the Notice of Opposition prior to Applicant's intent and/or decision to adopt, use, or file for federal registration of Applicant's Mark, state whether Applicant considered the issue of, and/or received any opinions, advice, and/or counsel regarding, a likelihood of confusion between Applicant's Mark and Opposer's Mark.

RESPONSE TO INTERROGATORY NO. 13: Applicant objects to this interrogatory on the grounds that it calls for information protected by privilege.

INTERROGATORY NO. 24: State the basis upon which Applicant believed, in applying for registration of Applicant's Mark based upon Applicant's *bona fide* intent to use the mark in commerce, that no other person had a right to use Applicant's Mark in commerce either in identical form thereof or in such near resemblance thereto as to be likely to cause confusion, mistake, and/or deception.

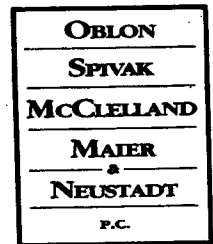
RESPONSE TO INTERROGATORY NO. 24: Applicant objects to this interrogatory on the grounds that it calls for information protected by the attorney-client or work product privilege.

Applicant refused to produce any information responsive to Interrogatory Nos. 13 and 24 on the grounds of some unidentified privilege. Applicant is required to state the basis for any claim of privilege in sufficient detail so as to permit the Board to adjudicate whether the claim of privilege is valid. Please provide all information germane to the claim of privilege at this time. To the extent that any information responsive to Interrogatory Nos. 13 and 24 is not privileged, all such information should be provided in a supplemental response.

INTERROGATORY NO. 19: Identify each agreement, including, without limitation, each assignment, license, authorization, permission, and/or consent, entered into by Applicant regarding Applicant's Mark and/or Applicant's Products.

RESPONSE TO INTERROGATORY NO. 19: Applicant objects to this interrogatory in the grounds that it is overly broad, burdensome, ambiguous, and requests information outside the scope of these proceedings that is not likely to lead to discoverable information. Applicant also objects to this interrogatory to the extent it requires disclaimer of confidential, proprietary for privileged information.

Applicant refused to produce any information or documents responsive to Interrogatory 19 on the stated grounds. However, Applicant has failed to state precisely how or why the interrogatory is "overbroad, burdensome, and ambiguous." Furthermore, Applicant's claim that the information requested is not discoverable is wrong. The information is relevant to many of the issues germane to this proceeding, including the similarity of the parties' goods, channels of trade, conditions of sale, and consumers for the goods, among others. As for Applicant's claim of confidentiality, the parties can enter into a draft stipulated protective order as discussed above



and enclosed herewith. Accordingly, please produce all responsive information in a supplemental response.

INTERROGATORY NO. 20: Identify each channel of distribution and each geographical area of trade within which Applicant's Products are and/or are intended to be promoted, distributed, and/or sold in connection with Applicant's Mark.

RESPONSE TO INTERROGATORY NO. 20: Applicant has not yet used Applicant's Mark in commerce. Applicant directs Opposer to its website www.sleeman.com and other publicly available documents in response to this inquiry.

Although this interrogatory requests that Applicant identify the channels of distribution and geographical areas of trade, Applicant has merely referred Opposer to Applicant's website. Applicant is required to produce fully responsive information to this Interrogatory, and cannot merely suggest that Heineken track down that information on the Internet. Please provide a fully responsive answer to the Interrogatory in a supplemental response.

INTERROGATORY NO. 23: State the basis for Applicant's *bona fide* intent to use Applicant's Mark in commerce on the date Applicant's representative signed the application that ultimately was assigned Serial Number 78/336,665 by the U.S. Patent and Trademark Office.

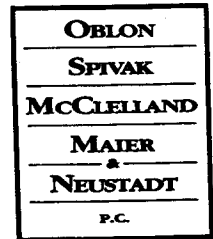
RESPONSE TO INTERROGATORY NO. 23: Applicant objects to this interrogatory on the grounds that it calls for a legal determination as to the "basis for Applicant's *bona fide* intent to use."

Applicant's objection to Interrogatory No. 23 is specious. The interrogatory requires Applicant to state the factual basis for Applicant's claimed *bona fide* intent to use Applicant's Mark. See, e.g., *Lane Ltd. v. Jackson Int'l Trading Co.*, 33 USPQ2d 1351, 1352 (TTAB 1994); *Commodore Elecs. Ltd. v. CBM Kabushiki Kaisha*, 26 USPQ2d 1503, 1504 (TTAB 1993). The Interrogatory is entirely proper and Applicant is required to respond to it fully. Please provide a supplemental response.

INTERROGATORY NO. 26: Identify each person who supplied documents or information for, or who has participated in responding to, these Interrogatories, Opposer's First Request for Production of Documents and Things, and/or Opposer's First Requests for Admissions.

RESPONSES TO INTERROGATORY NO. 26: Dan Rogozynski and Kenneth McKay.

Applicant has merely provided the names of two people, but withheld identifying information such as their title, address, employer and the like that is plainly required by the interrogatory. Please provide all such information in a supplemental response.



*Applicant's Responses to Opposer's First Request
For Production of Documents and Things*

REQUEST FOR PRODUCTION NO. 1: Produce each document and thing that Applicant identified in responding to Opposer's First Set of Interrogatories.

RESPONSE TO REQUEST FOR PRODUCTION NO. 1: To the best of Applicant's knowledge no documents were identified in responding to Opposer's First Set of Interrogatories.

Applicant's responses to Opposer's First Set of Interrogatories were inadequate as outlined above. If Applicant identifies documents in its supplemental interrogatory responses, please produce those documents with the supplemental responses.

REQUEST FOR PRODUCTION NO. 2: Produce each document and thing forming the basis for the denial, in whole or in part, with respect to each of Applicant's responses to Opposer's First Request for Admissions.

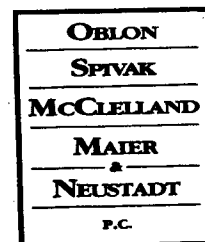
RESPONSE TO REQUEST FOR PRODUCTION NO. 2: Applicant objects to this request on the basis that it is overly broad and burdensome. Notwithstanding the general and specific objections, certain documents identified in Opposer's First Request for Admissions and responsive to this request are already in the possession of Opposer.

Applicant's objection that the Request is overly broad and burdensome is conclusory and fails to state how the request is allegedly overly broad and burdensome. Moreover, Applicant's withheld production of responsive documents. Additionally, Applicant's response that some of the responsive documents may already be in Opposer's possession is insufficient. Please produce all responsive documents as part of a supplemental response.

REQUEST FOR PRODUCTION NO. 3: Produce each document and thing regarding the creation, selection, and/or adoption or intended adoption of Applicant's Mark by or on behalf of Applicant.

RESPONSE TO REQUEST FOR PRODUCTION NO. 3: Applicant objects to this request to the extent it calls for the production of documents protected by the attorney-client or work-product privileged. Notwithstanding the general and specific objections, any relevant, nonprivileged documents responsive to this request will be made available upon entry of a suitable protective order.

Applicant withheld responsive documents on the basis of a claimed privilege, but has failed to identify the documents with sufficient information to permit Heineken or the Board to assess the validity of the claim of privilege. Please provide a privilege log of all documents withheld on the grounds of privilege at this time. As for Applicant's confidentiality objection, we have offered a proposed Stipulated Protective Order for Applicant's review and execution.



REQUEST FOR PRODUCTION NO. 4: Produce each document and/or thing regarding any investigation such as a service mark, trademark, trade name, Internet name, or corporate name search regarding Applicant's actual and/or intended adoption, use, and/or application for federal registration of Applicant's Mark.

RESPONSE TO REQUEST FOR PRODUCTION NO. 4: Applicant objects to this request to the extent that it is overly broad and unduly burdensome. Notwithstanding the general and specific objections, any relevant, nonprivileged documents responsive to this request will be made available as discussed herein.

REQUEST FOR PRODUCTION NO. 5: Produce each document and thing regarding the date and/or anticipated date of first use anywhere, and the date and/or anticipated date of first use in commerce, of Applicant's Mark by or on behalf of Applicant.

RESPONSE TO REQUEST FOR PRODUCTION NO. 5: Applicant objects that the language of this request is overly broad and unduly burdensome. Notwithstanding the general and specific objections, Applicant has not used Applicant's Mark in commerce. To the extent that any relevant, nonprivileged documents meet this request over these objections they will be made available as discussed herein.

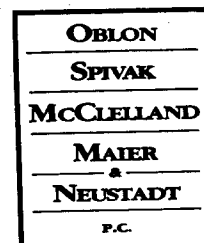
In response to each of these document requests, Applicant failed to state how each request is overly broad or burdensome. Also, Applicant has not identified which documents it will produce and which documents it refuses to produce. Applicant is obligated to produce all documents responsive to these Requests. Applicant failed to produce any responsive documents. Please produce all responsive documents at this time.

REQUEST FOR PRODUCTION NO. 7: Produce each document and thing regarding the geographical areas and channels of trade in which Applicant's Mark has been used, is used, and/or is proposed to be used.

RESPONSE TO REQUEST FOR PRODUCTION NO. 7: Applicant objects to this request on the bases that it is overly broad and unduly burdensome and also pertains to geographic areas and channels of trade outside the United States and therefore not relevant to this proceeding. Notwithstanding the general and specific objections, any relevant, nonprivileged documents responsive to this request will be made available upon entry of a suitable protective order.

REQUEST FOR PRODUCTION NO. 8: Produce each document and thing regarding each actual and/or intended assignment, consent, authorization, license and/or permission to use Applicant's Mark and/or Applicant's Products, including each modified version thereof.

RESPONSE TO REQUEST FOR PRODUCTION NO. 8: Applicant has not used Applicant's Mark in commerce nor has it assigned, consented, authorized, licensed, or permitted others to use Applicant's Mark in the United States. Therefore there are no relevant documents of this type to produce. To the extent that this request ask for documents and things regarding each actual and/or intended assignment, consent, authorization, license, and/or permission to use Applicant's Products, Applicant objects on the grounds that it is overly broad, unduly burdensome, and not directed toward information likely to lead to discoverable subject matter. Notwithstanding the general and specific objections, any relevant, nonprivileged documents responsive to this request will be made available upon entry of a suitable protective order.



REQUEST FOR PRODUCTION NO. 12: Produce each document and/or thing regarding types of customers with whom Applicant does or intends to do business, and the ultimate consumers to whom Applicant offers or intends to offer Applicant's Products that bear or will bear Applicant's Mark.

RESPONSE TO REQUEST FOR PRODUCTION NO. 12: Applicant objects to this request on the basis that it is overly broad and burdensome. Notwithstanding the general and specific objections, any relevant, nonprivileged documents responsive to this request will be made available upon entry of a suitable protective order.

REQUEST FOR PRODUCTION NO. 16: Produce each document and/or thing regarding the date and circumstances under which Applicant became aware of the use and/or registration of Opposer's Mark prior to Applicant's intention or decision to adopt, use, or apply for federal registration of Applicant's Mark.

RESPONSE TO REQUEST FOR PRODUCTION NO. 16: Applicant objects to this request on the basis that it is overly broad and burdensome. Notwithstanding the general and specific objections, any relevant, nonprivileged documents responsive to this request will be made available upon entry of a suitable protective order.

REQUEST FOR PRODUCTION NO. 17: Produce each document and/or thing regarding each action taken by Applicant in response to its awareness of Opposer's Mark.

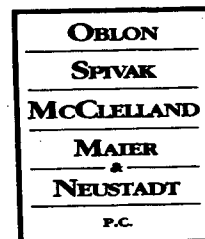
RESPONSE TO REQUEST FOR PRODUCTION NO. 17: Applicant objects to this request on the basis that it is overly broad, burdensome, vague and ambiguous. Any relevant, nonprivileged documents responsive to this request will be made available upon entry of a suitable protective order.

In response to Requests Nos. 7, 8, 12, 16 and 17, Applicant objected on the grounds that the requests are overly broad and burdensome, but failed to state how the requests are overly broad or burdensome, and did not identify which documents it will produce and which documents it refuses to produce. Opposer is obligated to produce all documents responsive to these requests. Please produce all responsive documents at this time.

REQUEST FOR PRODUCTION NO. 11: Produce each document and/or thing regarding each print and/or electronic media publication in which Applicant has advertised or promoted, is advertising or promoting, or plans to advertise or promote its Applicant's Products in connection with Applicant's Mark.

RESPONSE TO REQUEST FOR PRODUCTION NO. 11: Applicant objects to this request to the extent that it calls for Applicant's future plans. As to print and/or electronic media publications in which Applicant has advertised or promoted or is advertising or promoting, Applicant is not presently aware of any relevant documents responsive to this request. Applicant has not used Applicant's Mark in commerce.

Applicant objected to this Request in part on the grounds that it calls for Applicant's future plans. This objection lacks merit. Applicant improperly withheld relevant responsive documents and should produce all such documents at this time.



REQUEST FOR PRODUCTION NO. 14: Produce each document and/or thing regarding the dollar value of Applicant's actual and/or projected sales of products that bear or will bear Applicant's Mark since the date of first use or intended first use of the mark.

RESPONSE TO REQUEST FOR PRODUCTION NO. 14: Applicant has not used Applicant's Mark in commerce, and, as such, Applicant is not aware of any relevant documents responsive to this request.

Applicant objected to this Request claiming that because Applicant has not used its mark in commerce it is not aware of any relevant responsive documents. Applicant's objection and response ignore that the Request seeks documents regarding the projected sales of products that will bear Applicant's Mark. Please produce all responsive documents and materials at this time.

In responses to Requests Nos. 13, 14, 18, 19, and 21, Applicant stated that it is not presently aware of any responsive documents. To the extent Applicant becomes aware of any such documents in the future, it should supplement its responses and produce all such documents in accordance with Fed. R. Civ. P. 26(e).

Applicant's Responses to Opposer's First Request for Admissions

REQUEST FOR ADMISSIONS NO. 21: Admit that Applicant knew about the use of Opposer's Mark before adopting Applicant's Mark.

RESPONSE TO REQUEST FOR ADMISSIONS NO. 21: At this time, Applicant is without sufficient information to admit or deny, and so Applicant denies this request.

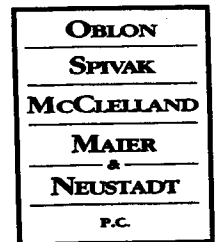
REQUEST FOR ADMISSIONS NO. 24: Admit that Applicant knew about the use of Opposer's Mark before filing its application to Federally register Applicant's Mark.

RESPONSE TO REQUEST FOR ADMISSION NO. 24: At this time Applicant is without sufficient information to admit or deny, and so Applicant denies this request.

Although Applicant claims that it is without sufficient information to admit or deny its knowledge before adopting its mark or filing its application to register its mark, Applicant plainly can investigate and determine that knowledge, which it is required to do. Please fully respond to these Requests by admitting or denying them in supplemental responses.

REQUEST FOR ADMISSION NO. 66: Admit that Exhibit 2, attached hereto, is not a two-dimensional representation of a container for Applicant's Product bearing Applicant's Mark.

Jeffrey L. Van Hoosear, Esquire
274098US-229137-261397-69
Page 11



RESPONSE TO REQUEST FOR ADMISSION NO. 66: Subject to the General Objections, Applicant also objects to this request as being nonsensical for the reasons set forth in the response to Request for Admission No. 65 above.

REQUEST FOR ADMISSION NO. 67: Admit that Exhibit 2, attached hereto, is a two-dimensional representation of a container for Applicant's Product bearing Applicant's Mark.

RESPONSE TO REQUEST FOR ADMISSION NO. 67: Subject to the General Objections, Applicant also objects to this request as being nonsensical for the reasons set forth in the response to Request for Admission No. 65 above.

REQUEST FOR ADMISSION NO. 68: Admit that the shape of the can depicted in Exhibit 2 is shaped like a beer barrel.

RESPONSE TO REQUEST FOR ADMISSION NO. 68: Subject to the General Objections, Applicant also objects to this request as being nonsensical for the reasons set forth in the response to Request for Admission No. 65 above.

REQUEST FOR ADMISSION NO. 69: Admit that the shape of the container depicted in Exhibit 2 is shaped like a beer barrel.

RESPONSE TO REQUEST FOR ADMISSION NO. 69: Subject to the General Objections, Applicant also objects to this request as being nonsensical for the reasons set forth in the response to Request for Admission No. 65 above.

Applicant failed to adequately respond to Requests Nos. 66 through 69, and must respond to each of the requests by admitting or denying them in accordance with Fed. R. Civ. P. 36.

Please send us your written response to this letter and produce Applicant's supplemental responses and responsive documents so that we receive them on or before **December 16, 2005**. Additionally, please advise when you are available in the near future to discuss these matters with a view toward narrowing the areas of disagreement.

Very truly yours,

OBLON, SPIVAK, McCLELLAND,
MAIER & NEUSTADT, P.C.

Jonathan Hudis

JH/BBD/kae/lw {I:\atty\JH\Heineken\229137-274098US-lt2.doc}

Enclosures(s): Stipulated Protective Order

EXHIBIT B

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

HEINEKEN BROUWERIJEN B.V.,

Opposer,

v.

THE SLEEMAN BREWING &
MALTING CO., LTD.,

Applicant.

Opposition No.: 91/166,542
Appln. Serial No. 78/336,665

The Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

STIPULATED PROTECTIVE ORDER

Opposer, Heineken Brouwerijen B.V., and Applicant, The Sleeman Brewing & Malting Co., Ltd., through their respective counsel, have stipulated to the protection from disclosure of trade secrets and other confidential commercial information under Federal Rule of Civil Procedure 26(c)(7), and hereby consent to entry of this Stipulated Protective Order.

1. As used herein, the term "confidential material" shall refer to any answer, document, article or thing or any portion or portions thereof which contain information that is a trade secret or other confidential research, development, or commercial information as such terms are used in Federal Rule of Civil Procedure 26(c)(7). All materials identified as "Confidential Attorneys Only" or "Confidential" shall be used only for purposes of this proceeding.

2. If any answer given or document, article or thing produced in response to discovery is believed to contain confidential material, the responding party or nonparty may mark or

designate such answer, document, article or thing (hereinafter, sometimes called an "item") "Confidential Attorneys Only" or "Confidential," and any item so marked or designated shall thereafter be handled in accordance with paragraphs 3 to 12 hereof. The designation of any answer, documents, article or thing as "Confidential" shall constitute a representation that counsel, in good faith, believes that the item so designated contains confidential material as that term is defined in paragraph 1 above. The designation of any answer, documents, article or thing as "Confidential Attorneys Only" shall constitute a representation that counsel, in good faith, believe that the item so designated is a trade secret or is otherwise highly confidential material.

3. Any party or non-party may designate any item as confidential by placing on or affixing to such item, in a manner that will not interfere with the legibility thereof, a notice identifying the item as "Confidential Attorneys Only" or "Confidential."

4. The producing party shall retain the original of any items marked "Confidential Attorneys Only" or "Confidential." Counsel for the other party shall, however, have the right to examine the original, and the copy or specimen furnished by the producing party shall have the same force and effect as the original thereof, subject to correction if error be shown. Unless otherwise expressly indicated, the title of a "Confidential Attorneys Only" or "Confidential" item, or the absence of a title, the date and identity of the writer and recipient of such document as well as any materials which incorporate, in whole or in part, any of such designated confidential items, shall be deemed "Confidential Attorneys Only" or "Confidential."

5. Subject to paragraphs 7, 8 and 9 hereof, "Confidential Attorneys Only" items shall be disclosed only to outside counsel in this case, including outside counsel's attorneys, clerks, paralegals and secretaries employed by outside counsel (hereinafter collectively "outside counsel" or "counsel") and to "persons assisting those attorneys" as defined herein. All

disclosures shall be in conformity with the terms of paragraph 6 hereof. As used herein, "persons assisting those attorneys" shall mean experts and consultants who are not otherwise in the employ of the parties and have need to know said confidential material to assist the outside counsel in this case.

6. Items designated merely "Confidential" can be disclosed to all of the persons identified in Paragraph 5 above and to Julie M. Kinch, Esquire as in-house counsel of Opposer's subsidiary Heineken USA, Inc., and to _____ as in-house counsel of Applicant.

7. Outside counsel, before disclosing "Confidential Attorneys Only" or "Confidential" material to persons assisting outside counsel, as defined in paragraph 5 above, shall first provide to opposing counsel such persons' qualifications in the form of a *curriculum vitae* or resume and such persons' current professional affiliation(s), upon receipt of which the other party and its counsel shall have five (5) business days in which to object to the proposed disclosure. If no objection to the proposed disclosure is forthcoming within this period, outside counsel shall give a copy of this Protective Order to such persons and receive from such persons their acknowledgement in writing that they have read this Protective Order and are fully familiar with the provisions hereof and agree to abide thereby and to make disclosures of such "Confidential Attorneys Only" or "Confidential" material only to persons specified in paragraph 5 who have seen the Protective Order and executed an acknowledgement in writing in the form as follows:

The undersigned has read the Stipulated Protective Order pursuant to Federal Rules of Civil Procedure 26 (c) and confirms: (1) that he/she shall fully abide by the terms thereof; (2) that he/she shall not disclose the Confidential Material to or discuss the Confidential Material with any person who is not authorized pursuant to the terms of said Protective Order to receive the disclosure thereof; and (3) that he/she shall not use such Confidential Material for any purpose other than for the purposes of this case.

8. In the event that any "Confidential Attorneys Only" or "Confidential" item or items are included with any paper filed with the Board, such items shall be filed in a separate sealed envelope or other sealed container bearing the proceeding number and name, an indication of the general nature of the contents of the envelope or container, and in large letters, the designation "CONFIDENTIAL." Such items are to be sealed pursuant to this Protective Order and are not to be disclosed to any person other than the Board and outside counsel for the parties to this action.

9. In the event that any item embodying "Confidential Attorneys Only" or "Confidential" material is used in depositions, the reporter shall be instructed that, pursuant to this Protective Order, the deposition and "Confidential Attorneys Only" or "Confidential" deposition exhibits, if retained by the reporter, shall be retained under seal, and if filed with the Board, shall be filed under seal pursuant to paragraph 8 hereof, and the reporter shall be further instructed not to furnish copies of any such material or disclose its contents to any persons other than counsel of record in this action.

10. If outside counsel wishes to disclose any "Confidential Attorneys Only" or "Confidential" material produced by the other party or a nonparty to witnesses and potential witnesses other than persons identified in paragraph 5 hereof, outside counsel may do so only with prior written consent of the other party under terms and conditions agreed to by the parties. If at a hearing in connection with any motion or other proceeding or at trial, a party intends to offer into evidence any "Confidential Attorneys Only" or "Confidential" material produced by the other party, that party shall so inform the other party ten (10) days in advance so that the other party may take such steps as it deems reasonably necessary to preserve the confidentiality of such material.

11. With respect to any item or portion thereof that has been designated as "Confidential Attorneys Only" or "Confidential," either party may at any time serve notice of nonacquiescence in such designation, and may thereafter move for an order vacating or modifying the provisions in paragraphs 2 through 10 hereof as to such items or portion thereof. If no such motion is served, the item or portion thereof in question shall continue to be entitled to the protection provided in paragraphs 2 through 10. If either party should file a motion, the item or portion thereof in question shall continue to be classified as "Confidential Attorneys Only" or "Confidential" until the motion is ruled upon by the Board and, if denied, as long as the Order denying the motion remains in effect. Upon any motion challenging a "Confidential Attorneys Only" or "Confidential" designation, the party designating the item "Confidential Attorneys Only" or "Confidential" shall bear the burden of establishing that the item is properly designated "Confidential Attorneys Only" or "Confidential" pursuant to this Stipulated Protective Order.

12. Upon final termination of this action, including any appeals, at the request of the producing party, the other party shall return or destroy all "Confidential Attorneys Only" or "Confidential" material produced in this action, including all copies, abstracts or summaries thereof, or documents containing information taken therefrom, but excluding any materials which in the judgment of counsel for the other party are work-product materials of said counsel. However, counsel for each party shall be permitted to keep, and shall maintain the confidentiality of, any briefs, memoranda, summaries and the like, which discuss, attach, or in any way refer to such Confidential Materials. The foregoing is without prejudice to the right of any party to apply to the Board for further protection or disclosure in the area of discovery.

IT IS HEREBY STIPULATED BETWEEN THE PARTIES:

HEINEKEN BROUWERIJEN B.V.

**THE SLEEMAN BREWING &
MALTING CO., LTD.**

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

**OBLON, SPIVAK, MCCLELLAND,
MAIER & NEUSTADT, P.C.**

**KNOBBE, MARTENS, OLSON
& BEAR, LLP**

By: _____

Jonathan Hudis, Esquire
Amy Sullivan Cahill, Esquire
1940 Duke Street
Alexandria, Virginia 22314

Attorneys for Opposer

Dated: _____, 2005

Jeffrey L. Van Hoosear
2040 Main Street
Fourteenth Floor
Irvine, CA 92614

Attorneys for Applicant

Dated: _____, 2005

IT IS SO ORDERED, THIS __ DAY OF _____, ____

BY THE BOARD:

Trademark Trial and Appeal Board

JH/BBD/kae {I:\ATTY\JH\HEINEKEN\229137-274098US-SPO.DOC}

EXHIBIT C

The Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

OPPOSER'S FIRST SET OF INTERROGATORIES

Opposer, HEINEKEN BROUWERIJEN B.V. ("Opposer"), serves the following interrogatories under Rule 33, Fed. R. Civ. P., and Trademark Rules 2.116(a) and 2.120(d)(1), to be answered separately and fully in writing under oath by an officer or agent of Applicant, THE SLEEMAN BREWING & MALTING CO. LTD. ("Applicant"). Each separately numbered or lettered sub-part of each interrogatory requires a separate answer thereto. Furthermore, these interrogatories shall be deemed to be continuing to the fullest extent permitted by the Rules, and Applicant shall provide Opposer with any supplemental answers and additional information that are requested herein that shall become available to Applicant at a later date.

DEFINITIONS AND INSTRUCTIONS

These Interrogatories and Opposer's Requests (for Production of Documents and Things and for Admissions), are subject to the Definitions and Instructions set forth below:

A. The term "Applicant" refers to THE SLEEMAN BREWING & MALTING CO. LTD., its subsidiaries, and affiliated companies (including distributors) and includes any predecessors or successors in interest, any persons who are, or at any time to which these Interrogatories or Requests relate were, controlled by or otherwise acting on behalf of the foregoing, the present or former officers, directors, partners, employees, agents, and representatives of any of the foregoing.

B. The term "person" or "persons" refers to natural persons, corporations, and any other form of business entity including, without limitation, partnerships, firms, ventures and associations and shall include divisions, departments, subsidiaries, directors, officers, owners, members, employees, agents, attorneys, or anyone else acting on the person's or entity's behalf.

C. The term "document" shall be construed in its broadest permissible sense, and shall include any and all means of conveying, storing, or memorializing information, whether in paper or other tangible physical form, or in electronic form, in the possession, custody, or control of Applicant. Each comment, or addition to, or deletion from, a document shall constitute a separate document.

D. Wherever Applicant is requested to "identify" or to state the identity of a natural person, please state, as to such person, the following information:

1. name;
2. present or last known residence, address, and telephone number;
3. present or last known business title and business address and telephone number;
4. business title and business address during the time period to which the interrogatory relates; and
5. whether there is or ever has been an employer/employee relationship, principal/agent relationship, or licensor/licensee or other relationship between such person and you and, if so, the nature of the relationship and the dates during which it existed.

E. Wherever Applicant is requested to "identify" or state the identity of a person other than a natural person, please state the following concerning such entity:

1. its full, legal name;
2. its form of organization;
3. its address and principal place of business; and
4. whether there is or has ever been an employer/employee relationship, principal/agent relationship, or licensor/licensee or other relationship between such person and Applicant and, if so, the nature of the relationship and the dates during which it existed.

F. Wherever Applicant is requested to "identify" or to state the identity of a document, please state, as to each such document, the following information:

1. its date;
2. its title and/or all identifying numbers or other identifying or categorizing designations and, if not apparent in the title, a brief description of the general nature and subject matter;
3. the name, title, and address of each author, signatory or preparer;
4. the name, title, and address of each addressee and each other person receiving a copy thereof;
5. its present location and the name and address of its present custodian;
6. if the document is not an original, the name and address of the original custodian; and
7. any other designation necessary to sufficiently identify the document so that a copy thereof may be ordered or obtained from the custodian thereof.

G. If Applicant refuses to identify and/or produce any document or information related thereto based upon a claim of confidentiality, privilege, or work product immunity, Applicant shall, in log form: (i) identify each document by its author, intended recipient, the date

of the document, and its general subject matter, and (ii) set forth for each withheld document the particular basis for the refusal of production.

H. The term "regarding" means relating or referring to, incorporating, comprising, touching upon, indicating, evidencing, affirming, denying, concerned with, relevant to, or likely to lead to admissible evidence.

I. The term "Opposer's Mark" shall mean Opposer's registered mark:



that is the subject of U.S. Registration No. 2,262,093.

J. The term "Opposer's Products" shall mean the products identified in U.S. Trademark Registration Number 2,262,093.

K. The term "Applicant's Mark" shall mean Applicant's mark:



that is the subject of Application Serial Number 78/336,665.

L. The term "Applicant's Products" shall mean products actually and/or intended to be advertised, promoted, and/or sold in connection with Applicant's Mark, and which are identified in Application Serial Number 78/336,665.

M. The term "each" includes "each" and "every."

N. The term "and/or" is to be read in both the conjunctive and disjunctive and shall serve as a request for information which would be responsive under a conjunctive reading in addition to all information which would be responsive under a disjunctive reading.

INTERROGATORIES

INTERROGATORY NO. 1

State the address of each location at which Applicant maintains a place of business where Applicant's Products are promoted, sold, and/or distributed under Applicant's Mark.

INTERROGATORY NO. 2

Identify each person responsible for the actual and/or intended promotion, distribution, and/or sale of Applicant's Products under Applicant's Mark.

INTERROGATORY NO. 3

State the date, if known, or the approximate date, if unknown, on which Applicant decided to adopt Applicant's Mark.

INTERROGATORY NO. 4

Identify each person who conceived of Applicant's Mark for use by Applicant.

INTERROGATORY NO. 5

Identify, by common commercial descriptive name, each product actually and/or intended to be offered for sale, advertised, and/or promoted by or on behalf of Applicant bearing Applicant's Mark.

INTERROGATORY NO. 6

For each product identified in answer to Interrogatory No. 5, state the date or anticipated date of first use anywhere, and describe the circumstances surrounding such use.

INTERROGATORY NO. 7

For each product identified in answer to Interrogatory No. 5, state the date or anticipated date of first use in commerce, and describe the circumstances surrounding such use.

INTERROGATORY NO. 8

For each product identified in answer to Interrogatory No. 5, state, by calendar quarter, the dollar volume budgeted and/or expended by Applicant to promote Applicant's Mark in connection therewith.

INTERROGATORY NO. 9

For each product identified in answer to Interrogatory No. 5, state, by calendar quarter and by each state of the United States, the approximate income anticipated and/or received to date from sales of Applicant's Products bearing Applicant's Mark.

INTERROGATORY NO. 10

Identify representative examples of each different promotional document and item used or considered for use by Applicant in connection with the promotion, distribution, and/or sale of Applicant's Products bearing Applicant's Mark.

INTERROGATORY NO. 11

Identify each search of any type conducted by or on behalf of Applicant in connection with its intent and/or decision to adopt, use, or apply for federal registration of Applicant's Mark.

INTERROGATORY NO. 12

State whether Applicant knew of Opposer's use and/or registration of Opposer's Mark identified in the Notice of Opposition prior to Applicant's intent and/or decision to adopt, use, or file for federal registration of Applicant's Mark.

INTERROGATORY NO. 13

If Applicant knew of Opposer's Mark identified in the Notice of Opposition prior to Applicant's intent and/or decision to adopt, use, or file for federal registration of Applicant's Mark, state whether Applicant considered the issue of, and/or received any opinions, advice, and/or counsel regarding, a likelihood of confusion between Applicant's Mark and Opposer's Mark.

INTERROGATORY NO. 14

Identify (by title, publisher, issue date, page number, and any other relevant designation), each printed and/or electronic publications in which Applicant has promoted and/or plans to promote Applicant's Products in connection with Applicant's Mark.

INTERROGATORY NO. 15

Identify (by name, date and location) each trade show, trade fair, trade convention or other promotional trade venue in which Applicant has promoted and/or plans to promote its products in connection with Applicant's Mark.

INTERROGATORY NO. 16

Identify all market research (including, but without limitation, surveys, studies, investigations, and/or focus group inquiries) conducted by or on behalf of Applicant regarding Applicant's Mark, and state the results thereof.

INTERROGATORY NO. 17

Identify, in order of approximate level of knowledge, each person who knows of any market research (including, but without limitation, surveys, studies, investigations and/or focus group inquiries) conducted by or on behalf of Applicant regarding Applicant's Mark, including the results thereof.

INTERROGATORY NO. 18

Identify Applicant's knowledge of each instance in which a person experienced actual confusion, initial interest (pre-sale) confusion, mistake, and/or deception between Applicant's Products promoted, distributed, and/or sold in connection with the Applicant's Mark and Opposer's Products promoted, distributed, and/or sold in connection with Opposer's Mark.

INTERROGATORY NO. 19

Identify each agreement, including, without limitation, each assignment, license, authorization, permission, and/or consent, entered into by Applicant regarding Applicant's Mark and/or Applicant's Products.

INTERROGATORY NO. 20

Identify each channel of distribution and each geographical area of trade within which Applicant's Products are and/or are intended to be promoted, distributed, and/or sold in connection with Applicant's Mark.

INTERROGATORY NO. 21

Identify each person who, and company that, has participated or participates in creating and/or distributing advertisements or marketing materials in the United States for Applicant's Products in connection with Applicant's Mark, and state the period of time during which each company that, and/or person who, participated or participates in such activities.

INTERROGATORY NO. 22

For each expert Applicant has retained to give testimony in this proceeding, provide the information required pursuant to Rule 26(a)(2)(B), Fed. R. Civ. P.

INTERROGATORY NO. 23

State the basis for Applicant's *bona fide* intent to use Applicant's Mark in commerce on the date Applicant's representative signed the application that ultimately was assigned Serial Number 78/336,665 by the U.S. Patent and Trademark Office.

INTERROGATORY NO. 24

State the basis upon which Applicant believed, in applying for registration of Applicant's Mark based upon Applicant's *bona fide* intent to use the mark in commerce, that no other person had a right to use Applicant's Mark in commerce either in identical form thereof or in such near resemblance thereto as to be likely to cause confusion, mistake, and/or deception.

INTERROGATORY NO. 25

Identify each different manner that Applicant's Mark has been used and/or is intended to be used (*i.e.*, on or as part of containers (*e.g.*, cans) for Applicant's Products, on packaging, on signage, on web pages, on printed advertising, and/or on promotional items).

INTERROGATORY NO. 26

Identify each person who supplied documents or information for, or who has participated in responding to, these Interrogatories, Opposer's First Request for Production of Documents and Things, and/or Opposer's First Requests for Admissions.

Respectfully submitted,

HEINEKEN BROUWERIJEN B.V.

By:



Jonathan Hudis

Kyoko Imai

Oblon, Spivak, McClelland,

Maier & Neustadt, P.C.

1940 Duke Street

Alexandria, Virginia 22314

(703) 413-3000

fax (703) 413-2220

e-mail: tmdocket@oblon.com

Date: September 30, 2005

JH/KI/cli {I:\atty\JH\Heineken\229137-274098US-int.doc}

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing OPPOSER'S FIRST SET OF INTERROGATORIES was served on counsel for Applicant, this 30th day of September, 2005, by sending same via First Class mail, postage prepaid, to:

Jeffrey L. Van Hoosear
KNOBBE MARTENS OLSON & BEAR LLP
14th Floor
2040 Main Street
Irvine, CA 92614



Carlette Lisenby

EXHIBIT D

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

HEINEKEN BROUWERIJEN B.V.,

Applicant,

v.

THE SLEEMAN BREWING & MALTING
CO. LTD.,

Opposer.

Opposition No.: 91/166,542
Appln. Serial No. 78/336,665

The Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

OPPOSER'S FIRST REQUEST FOR
PRODUCTION OF DOCUMENTS AND THINGS

Opposer, HEINEKEN BROUWERIJEN B.V. ("Opposer"), hereby requests, pursuant to Rule 34, Fed. R. Civ. P., and Trademark Rules 2.116(a) and 2.120(d)(2), that Applicant, THE SLEEMAN BREWING & MALTING CO. LTD. ("Applicant"), produce the documents and things listed below for inspection and copying, and that said production be made accompanying Applicant's service of its responses to this Request upon Opposer at the offices of Oblon, Spivak, McClelland, Maier & Neustadt, P.C., Fourth Floor, 1940 Duke Street, Alexandria, Virginia 22314.

DEFINITIONS AND INSTRUCTIONS

A. The Definitions and Instructions contained in Opposer's First Set of Interrogatories are incorporated herein by reference.

B. With respect to each document and/or thing requested below for which a claim of privilege, work product or confidentiality is made, specify (in log form) the nature of the document and/or thing, identify by name, address, title and business affiliation, the writer, the addressee and all recipients thereof, and set forth the general subject matter to which the document relates, and its date.

C. Applicant shall separately identify the Request by number pursuant to which document or thing is produced.

REQUESTS

1. Produce each document and thing that Applicant identified in responding to Opposer's First Set of Interrogatories.

2. Produce each document and thing forming the basis for the denial, in whole or in part, with respect to each of Applicant's responses to Opposer's First Request for Admissions.

3. Produce each document and thing regarding the creation, selection, and/or adoption or intended adoption of Applicant's Mark by or on behalf of Applicant.

4. Produce each document and/or thing regarding any investigation such as a service mark, trademark, trade name, Internet name, or corporate name search regarding Applicant's actual and/or intended adoption, use, and/or application for federal registration of Applicant's Mark.

5. Produce each document and thing regarding the date and/or anticipated date of first use anywhere, and the date and/or anticipated date of first use in commerce, of Applicant's Mark by or on behalf of Applicant.

6. Produce each document and thing demonstrating each type of product, container, and packaging in connection with which Applicant's Mark has been used and/or is proposed to be used.

7. Produce each document and thing regarding the geographical areas and channels of trade in which Applicant's Mark has been used, is used, and/or is proposed to be used.

8. Produce each document and thing regarding each actual and/or intended assignment, consent, authorization, license and/or permission to use Applicant's Mark and/or Applicant's Products, including each modified version thereof.

9. Produce representative specimens of each different container, item of packaging and/or labeling materials for Applicant's Products that bear and/or will bear Applicant's Mark, including each prototype, draft or sketch for said container, packaging or labeling, and produce each document and/or thing regarding the design or creation of said container, packaging or labeling.

10. Produce representative specimens of the current and/or proposed advertising and/or promotional documents and electronic media that bear or will bear Applicant's Mark, used or to be used by or on behalf of Applicant.

11. Produce each document and/or thing regarding each print and/or electronic media publication in which Applicant has advertised or promoted, is advertising or promoting, or plans to advertise or promote its Applicant's Products in connection with Applicant's Mark.

12. Produce each document and/or thing regarding types of customers with whom Applicant does or intends to do business, and the ultimate consumers to whom Applicant offers or intends to offer Applicant's Products that bear or will bear Applicant's Mark.

13. Produce copies of each survey, market research test, demographic or consumer profile study, and/or focus group inquiry regarding ultimate purchasers or potential purchasers of Applicant's Products actually or intended to be sold, offered for sale, advertised or promoted under Applicant's Mark, including the results thereof.

14. Produce each document and/or thing regarding the dollar value of Applicant's actual and/or projected sales of products that bear or will bear Applicant's Mark since the date of first use or intended first use of the mark.

15. Produce each document and/or thing regarding the amount of money expended and/or budgeted by Applicant to promote Applicant's Products that bear or will bear Applicant's Mark since the date of first use or intended first use of Applicant's Mark.

16. Produce each document and/or thing regarding the date and circumstances under which Applicant became aware of the use and/or registration of Opposer's Mark prior to Applicant's intention or decision to adopt, use, or apply for federal registration of Applicant's Mark.

17. Produce each document and/or thing regarding each action taken by Applicant in response to its awareness of Opposer's Mark.

18. Produce each comparison study, survey, market research test, and each document and/or thing thereto related, including results thereof, regarding the actual and/or intended advertisements, promotions, distributions, and/or sales of Applicant's Products in connection with Applicant's Mark and the advertisements, promotions, distributions, and/or sales of

Opposer's Products in connection with Opposer's Mark, including, without limitation, those regarding actual confusion, likelihood of confusion, initial interest (pre-sale) confusion, and/or deception as to the source of Applicant's Products and/or Opposer's Products.

19. Produce each document and/or thing regarding each instance in which a person has been confused, mistaken, and/or deceived as to the source of Applicant's Products advertised, promoted, offered for sale, and/or sold under Applicant's Mark, and the source of Opposer's Products advertised, promoted, offered for sale, and/or sold under Opposer's Mark.

20. For each expert Applicant intends to call to provide testimony in this proceeding, produce:

- a) each written report provided by said expert regarding the subject matter of this proceeding;
- b) a complete written statement of each opinion to be expressed by the expert in this proceeding, and the basis and reasons therefor;
- c) each document reflecting the data or other information considered by the expert in forming his/her opinions;
- d) each exhibit to be used by the expert as a summary of or support for his/her opinions;
- e) documents stating the qualifications of the expert, such as would be reflected in a resume, curriculum vitae, biography, summary or otherwise;
- f) a written list of each publication authored by the witness within the last ten years;
- g) documents reflecting the compensation to be paid for the expert's preparation time and time taken to provide testimony; and


h) a written list of each case in which the witness testified as an expert at trial, in an administrative proceeding or by deposition within the past four years.

21. Produce each document regarding a charge of infringement brought by Applicant against another person or brought by another person against Applicant regarding the use and/or intended use of Applicant's Mark.

Respectfully submitted,

HEINEKEN BROUWERIJEN B.V.

By:


Jonathan Hudis
Kyoko Imai
Oblon, Spivak, McClelland,
Maier & Neustadt, P.C.
1940 Duke Street
Alexandria, Virginia 22314
(703) 413-3000
fax (703) 413-2220
e-mail: tmddocket@oblon.com

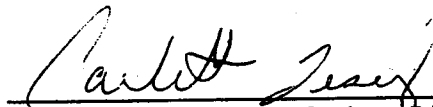
Date: September 30, 2005

JH/KI/cli {I:\atty\JH\Heineken\229137-274098US-rfp.doc}

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing OPPOSER'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS AND THINGS was served on counsel for Applicant, this 30th day of September, 2005, by sending same via First Class mail, postage prepaid, to:

Jeffrey L. Van Hoosear
KNOBBE MARTENS OLSON & BEAR LLP
14th Floor
2040 Main Street
Irvine, CA 92614



Carlette Lisenby

EXHIBIT E

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

HEINEKEN BROUWERIJEN B.V.,

Applicant,

V.

**THE SLEEMAN BREWING & MALTING
CO. LTD.,**

Opposer.

Opposition No.: 91/166,542
Appln. Serial No. 78/336,665

The Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

OPPOSER'S FIRST REQUEST FOR ADMISSIONS

Opposer, HEINEKEN BROUWERIJEN B.V. ("Opposer"), pursuant to Rule 36, Fed. R. Civ. P., and Trademark Rules 2.116 and 2.120, hereby requests that Applicant, THE SLEEMAN BREWING & MALTING CO. LTD. ("Applicant"), admit the following:

DEFINITIONS AND INSTRUCTIONS

A. The Definitions and Instructions forming a part of Opposer's First Set of Interrogatories to Applicant are incorporated herein by reference.

B. Additionally, if Applicant denies or objects, in whole or in part, to any Request below, Applicant shall state in detail reasons for such denial or objection.

REQUESTS

1. Admit that Applicant has not used Applicant's Mark in commerce.
2. Admit that Applicant does not intend to use Applicant's Mark in commerce.

3. Admit that Applicant has not used Applicant's Mark in connection with Applicant's Products in commerce.

4. Admit that Applicant does not intend to use Applicant's Mark in connection with Applicant's Products in commerce.

5. Admit that Applicant has used Applicant's Mark in commerce.

6. Admit that Applicant intends to use Applicant's Mark in commerce.

7. Admit that Applicant has used Applicant's Mark in connection with Applicant's Products in commerce.

8. Admit that Applicant intends to use Applicant's Mark in connection with Applicant's Products in commerce.

9. Admit that Applicant's Products may be promoted to consumers of varying degrees of sophistication.

10. Admit that Applicant's Products may be sold to consumers of varying degrees of sophistication.

11. Admit that Application Serial Number 78/336,665 for Applicant's Mark does not limit the goods set forth in the application to any particular trade channels.

12. Admit that Application Serial Number 78/336,665 for Applicant's Mark does not limit the goods set forth in the application to any particular class of customers.

13. Admit that a trademark search for Applicant's Mark was conducted on Applicant's behalf before the Mark was adopted.

14. Admit that a trademark search for Applicant's Mark was conducted on Applicant's behalf before the date of first use of Applicant's Mark.

15. Admit that a trademark search for Applicant's Mark was conducted on Applicant's behalf before the anticipated date of first use of Applicant's Mark.

16. Admit that a trademark search for Applicant's Mark was conducted on Applicant's behalf before Applicant filed its application to federally register Applicant's Mark.

17. Admit that no trademark search for Applicant's Mark was conducted by any person on Applicant's behalf before Applicant adopted the mark.

18. Admit that no trademark search for Applicant's Mark was conducted by any person on Applicant's behalf before the date of first use of Applicant's Mark.

19. Admit that no trademark search for Applicant's Mark was conducted by any person on Applicant's behalf before the anticipated date of first use of Applicant's Mark.

20. Admit that no trademark search for Applicant's Mark was conducted by any person on Applicant's behalf before Applicant filed its application to Federally register the mark.

21. Admit that Applicant knew about the use of Opposer's Mark before adopting Applicant's Mark.

22. Admit that Applicant knew about the use of Opposer's Mark before the anticipated date of first use of Applicant's Mark.

23. Admit that Applicant knew about the use of Opposer's Mark before the date of first use of Applicant's Mark.

24. Admit that Applicant knew about the use of Opposer's Mark before filing its application to Federally register Applicant's Mark.

25. Admit that Applicant knew about sales of Opposer's Products before Applicant adopted Applicant's Mark.

26. Admit that Applicant knew about sales of Opposer's Products before the date of first use of Applicant's Mark.

27. Admit that Applicant knew about sales of Opposer's Products before the anticipated date of first use of Applicant's Mark.

28. Admit that Applicant knew about sales of Opposer's Products before filing an application to Federally register Applicant's Mark.

29. Admit that Applicant's Mark is confusingly similar to Opposer's Mark.

30. Admit that Applicant's Mark appears confusingly similar to Opposer's Mark.

31. Admit that Applicant's Mark evokes a commercial impression that is confusingly similar to Opposer's Mark.

32. Admit that Applicant is aware of an instance in which a beer consumer has experienced actual confusion between Applicant's Products and Opposer's Products.

33. Admit that Applicant is aware of an instance in which a beer consumer has experienced actual confusion between Applicant's Mark and Opposer's Mark.

34. Admit that Applicant is aware of an instance in which a beer distributor has experienced actual confusion between Applicant's Products and Opposer's Products.

35. Admit that Applicant is aware of an instance in which a beer distributor has experienced actual confusion between Applicant's Mark and Opposer's Mark.

36. Admit that Applicant is aware of an instance in which a beer purchaser has experienced actual confusion between Applicant's Products and Opposer's Products.

37. Admit that Applicant is aware of an instance in which a beer purchaser has experienced actual confusion between Applicant's Mark and Opposer's Mark.

38. Admit that Applicant is aware of an instance in which a beer consumer has experienced initial interest (pre-sale) confusion between Applicant's Products and Opposer's Products.

39. Admit that Applicant is aware of an instance in which a beer consumer has experienced initial interest (pre-sale) confusion between Applicant's Mark and Opposer's Mark.

40. Admit that Applicant is aware of an instance in which a beer distributor has experienced initial interest (pre-sale) confusion between Applicant's Products and Opposer's Products.

41. Admit that Applicant is aware of an instance in which a beer distributor has experienced initial interest (pre-sale) confusion between Applicant's Mark and Opposer's Mark.

42. Admit that Applicant is aware of an instance in which a beer purchaser has experienced initial interest (pre-sale) confusion between Applicant's Products and Opposer's Products.

43. Admit that Applicant is aware of an instance in which a beer purchaser has experienced initial interest (pre-sale) confusion between Applicant's Mark and Opposer's Mark.

44. Admit that Applicant is aware of an instance in which a beer consumer has been mistaken as between the source of Applicant's Products and the source of Opposer's Products.

45. Admit that Applicant is aware of an instance in which a beer consumer has been mistaken as between the source of Applicant's Mark and the source of Opposer's Mark.

46. Admit that Applicant is aware of an instance in which a beer distributor has been mistaken as between the source of Applicant's Products and the source of Opposer's Products.

47. Admit that Applicant is aware of an instance in which a beer distributor has been mistaken as between the source of Applicant's Mark and the source of Opposer's Mark.

48. Admit that Applicant is aware of an instance in which beer purchaser has been mistaken as between the source of Applicant's Products and the source of Opposer's Products.

49. Admit that Applicant is aware of an instance in which a beer purchaser has been mistaken as between the source of Applicant's Mark and the source of Opposer's Mark.

50. Admit that Applicant is aware of an instance in which a beer consumer has been deceived as between the source of Applicant's Goods and the source of Opposer's Goods.

51. Admit that Applicant is aware of an instance in which a beer consumer has been deceived as between the source of Applicant's Mark and the source of Opposer's Mark.

52. Admit that Applicant is aware of an instance in which a beer distributor has been deceived as between the source of Applicant's Goods and the source of Opposer's Goods.

53. Admit that Applicant is aware of an instance in which a beer distributor has been deceived as between the source of Applicant's Mark and the source of Opposer's Mark.

54. Admit that Applicant is aware of an instance in which a beer purchaser has been deceived as between the source of Applicant's Goods and the source of Opposer's Goods.

55. Admit that Applicant is aware of an instance in which a beer purchaser has been deceived as between the source of Applicant's Mark and the source of Opposer's Mark.

56. Admit that attached as Exhibit 1 is a true and accurate copy of the file history for Application Serial Number 78/336,665.

57. Admit that Applicant promotes Applicant's Products via the Internet.

58. Admit that Applicant intends to promote Applicant's Products via the Internet.

59. Admit that on December 2, 2003, Don Rogozynski signed the Declaration that supports Application Serial No. 78/336,665.

60. Admit that the Declaration filed on December 4, 2003, supporting Application Serial No. 78/336,665, does not state that Applicant has a bona fide intention to use the mark.

61. Admit that Jeffrey L. Van Hoosear signed the Declaration forming a part of Applicant's Response to Office Action filed on December 23, 2004.

62. Admit that on December 23, 2004, Jeffrey L. Van Hoosear declared that "applicant has a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the identified goods and/or services as of the filing date of the application."

63. Admit that in Applicant's Response to Office Action filed on December 23, 2004, it states: "Applicant's mark is a two-dimensional representation of a can shaped like a beer barrel and featuring the distinct work [sic] SLEEMAN and the distinctive Sleeman Logo."

64. Admit that Applicant's Products bearing Applicant's Mark are sold in cans shaped like a beer barrel.

65. Admit that Applicant's Products bearing Applicant's Mark are not sold in cans shaped like a beer barrel.

66. Admit that Exhibit 2, attached hereto, is not a two-dimensional representation of a container for Applicant's Product bearing Applicant's Mark.

67. Admit that Exhibit 2, attached hereto, is a two-dimensional representation of a container for Applicant's Product bearing Applicant's Mark.

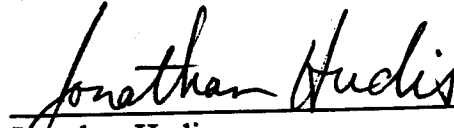
68. Admit that the shape of the can depicted in Exhibit 2 is shaped like a beer barrel.

69. Admit that the shape of the container depicted in Exhibit 2 is shaped like a beer barrel.

Respectfully submitted,

HEINEKEN BROUWERIJEN B.V.

By:



Jonathan Hudis

Kyoko Imai

Oblon, Spivak, McClelland,

Maier & Neustadt, P.C.

1940 Duke Street

Alexandria, Virginia 22314

(703) 413-3000

fax (703) 413-2220

e-mail: tmdocket@oblon.com

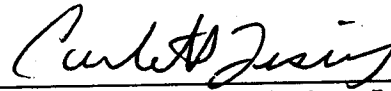
Date: September 30, 2005

JH/KI/cli {I:\atty\jh\heineken\229137-274098US-adm.doc}

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing OPPOSER'S FIRST REQUEST FOR ADMISSIONS was served on counsel for Applicant, this 30th day of September, 2005, by sending same via First Class mail, postage prepaid, to:

Jeffrey L. Van Hoosear
KNOBBE MARTENS OLSON & BEAR LLP
14th Floor
2040 Main Street
Irvine, CA 92614



Carlette Lisenby

EXHIBIT 1



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451
www.uspto.gov

Apr 27, 2005

NOTICE OF PUBLICATION UNDER 12(a)

1. Serial No.:
78/336,665
2. Mark:
SLEEMAN CREAM ALE
and design
3. International Class(es):
32
4. Publication Date:
May 17, 2005
5. Applicant:
The Sleeman Brewing & Malting Co. Ltd.

The mark of the application identified appears to be entitled to registration. The mark will, in accordance with Section 12(a) of the Trademark Act of 1946, as amended, be published in the Official Gazette on the date indicated above for the purpose of opposition by any person who believes he will be damaged by the registration of the mark. If no opposition is filed within the time specified by Section 13(a) of the Statute or by rules 2.101 or 2.102 of the Trademark Rules, the Commissioner of Patents and Trademarks may issue a notice of allowance pursuant to section 13(b) of the Statute.

Copies of the trademark portion of the Official Gazette containing the publication of the mark may be obtained from:

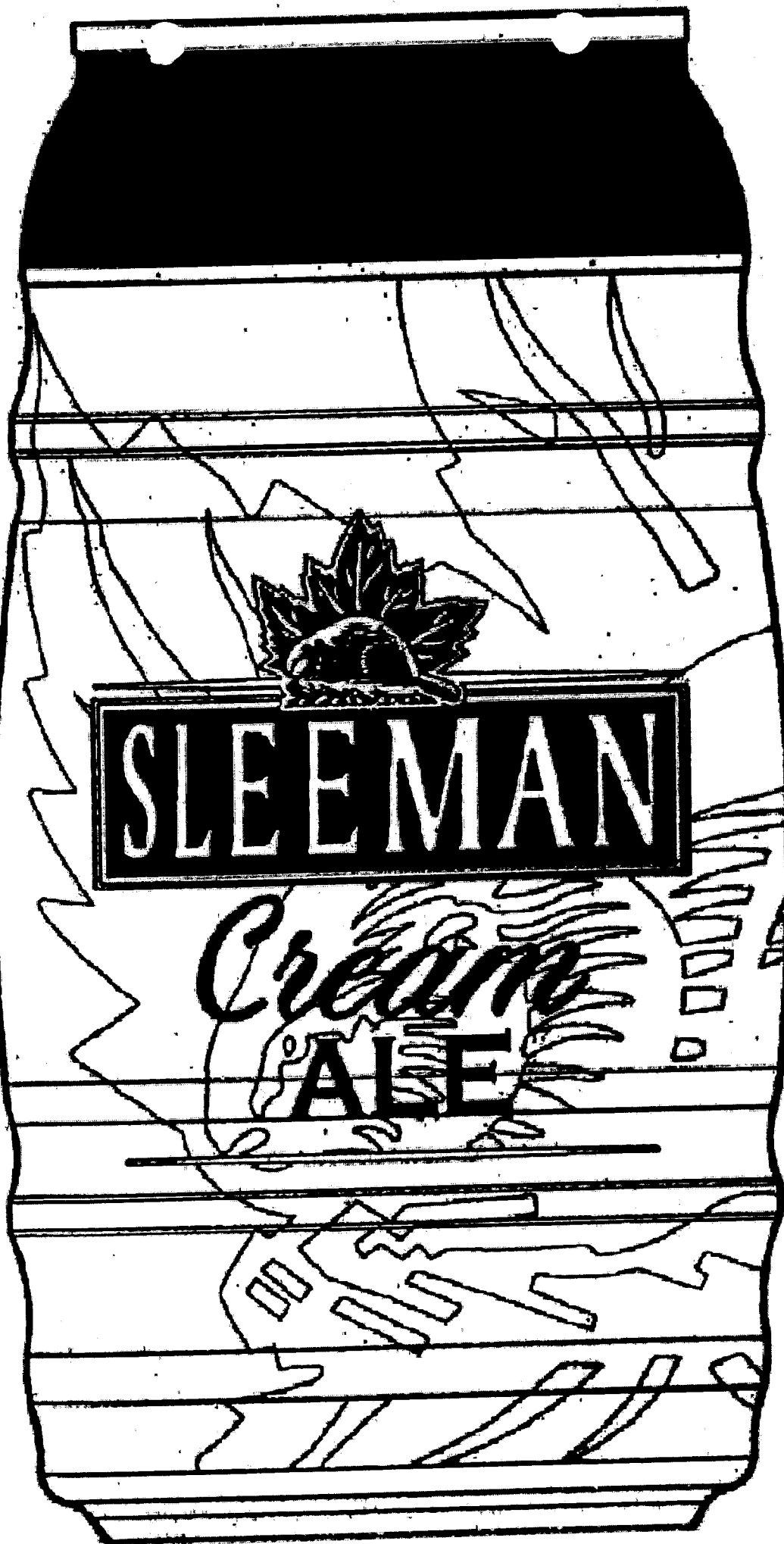
The Superintendent of Documents
U.S. Government Printing Office
PO Box 371954
Pittsburgh, PA 15250-7954
Phone: 202-512-1800

By direction of the Commissioner.

Correspondence Address:

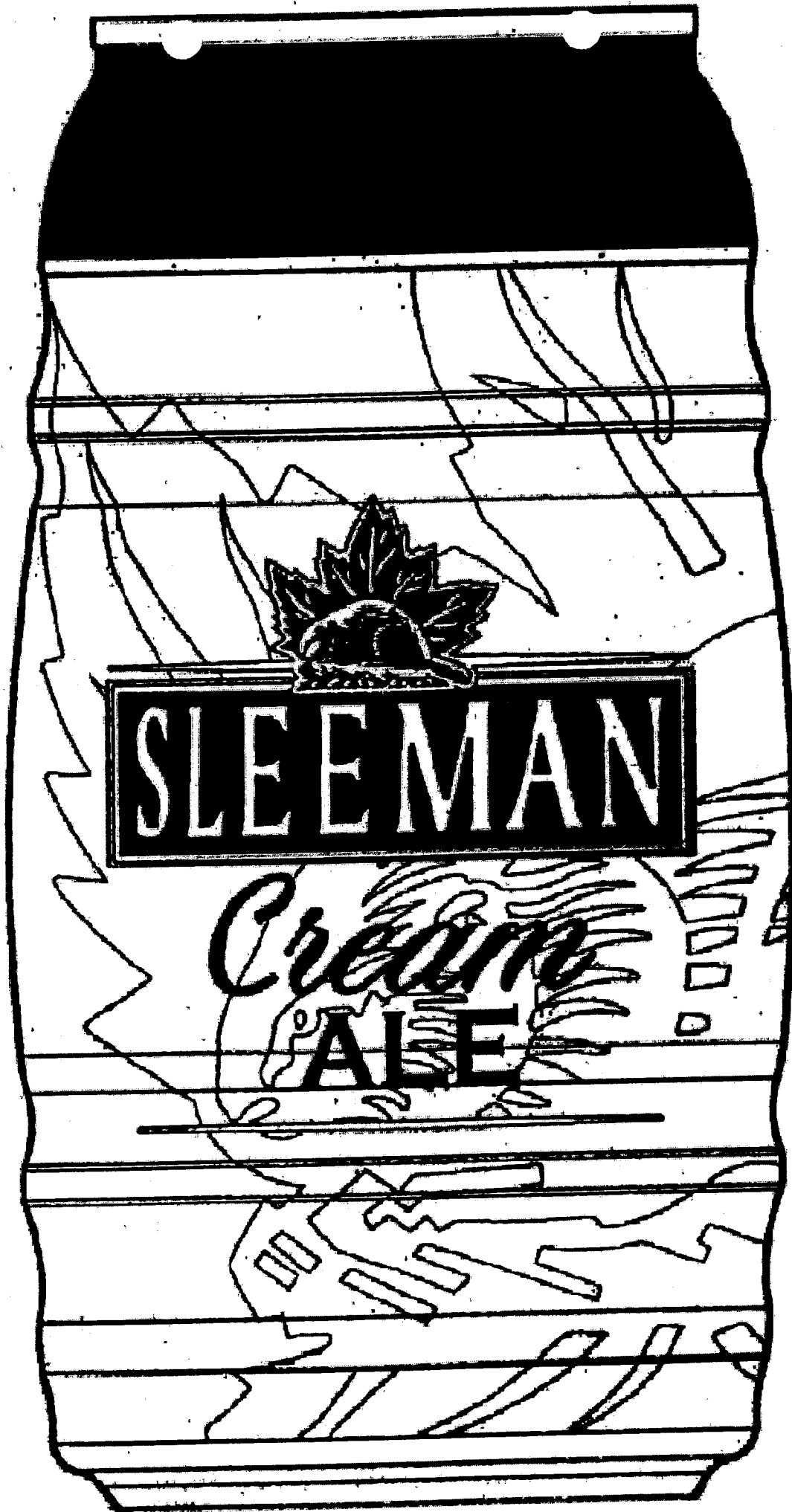
Jeffrey L. Van Hoosear
KNOBBE MARTENS OLSON & BEAR LLP
14th Floor
2040 Main Street
Irvine, CA 92614

TMP&I



SLEEMAN

Cream
ALE



Response to Office Action

The table below presents the data as entered.

SERIAL NUMBER	78336665
MARK SECTION (current)	
STANDARD CHARACTERS	NO
USPTO-GENERATED IMAGE	NO
LITERAL ELEMENT	SLEEMAN CREAM ALE
COLOR MARK	NO
MARK SECTION (proposed)	
MARK FILE NAME	\\TICRS\EXPORT11\IMAGEOUT 11\783\366\78336665\xml1\ROA0002.JPG
STANDARD CHARACTERS	NO
USPTO-GENERATED IMAGE	NO
COLOR MARK	NO
PIXEL COUNT ACCEPTABLE	YES
PIXEL COUNT	482 x 905
ARGUMENT(S)	

The following amendments, remarks and request for reconsideration are submitted in response to the Office Action dated June 24, 2004:

Please amend the identification of goods

"Brewed alcoholic beverages in the nature of ale."

Applicant makes the following statements of record:

--No claim is made to the exclusive right to use the term "CREAM ALE" apart from the mark as shown.--

--Applicant claims ownership of Registration Nos. 2788633, 2345180, 2359808 and others.--

--No claim is made to the gray tones in the drawing originally submitted by Applicant. A new drawing showing the mark in black and white only, with the gray tones deleted, is attached hereto.--

REMARKS

The Examining Attorney has refused registration of Applicant's mark under Trademark Act Section 2(d), 15 U.S.C. § 1052(d), on the ground that, when used on the identified goods and services, the mark is likely to be confused with the mark shown in U.S. Trademark Registration No. 2262093.

Applicant respectfully submits that the mark is not confusingly similar to the cited mark.

As the Examining Attorney has stated, the controlling standard for determining the likelihood of confusion issue is set forth in *In re E.I. DuPont de Nemours & Co.*, 476 F.2d 1357, 177 U.S.P.Q. 563 (C.C.P.A. 1973). Applicant maintains that a comparison of its mark and the cited marks, using the factors established by *DuPont*, clearly leads to the conclusion that there is no likelihood of confusion. In applying the relevant factors in the instant case, it is clear that the differences between Applicant's mark and the cited marks when viewed in their entireties are more than sufficient to preclude a likelihood of customer confusion.

Thus, as described below, a proper comparison of Applicant's entire mark to the cited mark shows that the marks are quite dissimilar in overall appearance and commercial impression.

Applicant's mark is a two-dimensional representation of a can shaped like a beer barrel and featuring the distinct work SLEEMAN and the distinctive Sleeman Logo. The front of the can bears the design elements of a maple leaf, a beaver, along with the word SLEEMAN in bold capital letters inside a darker rectangle design, the word CREAM in script beneath the word SLEEMAN, and the word ALE in distinct capital letters below the word CREAM. The mark also features back ground elements

The cited mark, Registration No.2262093, which issued July 20, 1999 to Heineken Brouwerijen B.V. ("Registrant") is a three-dimensional representation of a beer key. There are no other design elements to the cited mark. It is a three-dimensional representation of a plain can in the shape of a beer keg whereas Applicant's mark is a two-dimensional representation of a can in the shape of a beer barrel bearing additional design elements and wording. Even if it is assumed there is some common elements between the marks, that, in and of itself, does not mean there is potential for likelihood of confusion.

No Potential for Confusion Between the Applicant's mark and the Cited Mark

First of all, as submitted above, the Applicant's mark is not packaging but, it is a design mark. The Applicant's mark is not three-dimensional and therefore it is not confusing with the cited mark. In any case, the Applicant's mark is also distinguishable on the basis of the shape and the marking in the design (the maple leaf, a beaver, the word SLEEMAN in bold capital letters, a cut out of a big rectangular background, the word CREAM in script underneath the word SLEEMAN and the word ALE underneath the word CREAM in distinct capital letters.) This design is completely different from the cited mark. As well, the cited mark is claimed as a distinguishing guise in that it is a three-dimensional representation whereas the Applicant's mark is simply a two-dimensional design. As such, we respectfully submit that the Applicant's mark, as applied for in connection with the design noted above, is easily distinguishable from the cited mark and that therefore, they should not be found to be confusing with one another on that basis and on the basis of the other design elements. As well, based on the ownership that is indicated for the cited mark, one would assume that the cited mark when found in the marketplace would have the name HEINEKEN on it and green coloring which is typical of Heineken products.

Applicant respectfully requests the Examining Attorney to withdraw the refusal under Section 2(d).

The Examining Attorney requested that Applicant amend its identification of goods. Accordingly, as set forth above, Applicant has amended the identification of goods to make it definite.

The Examining Attorney also requested a disclaimer of the term "CREAM ALE". Accordingly, Applicant has made such a disclaimer of record.

In addition the Examining Attorney inquired if Applicant was the owner of Registration Nos. 2788615, 2345180, 2359808 and others, and, if so, that Applicant submit a claim of ownership. Accordingly, Applicant has claimed ownership of these registrations.

The Examining Attorney requested that Applicant clarify whether the gray tones in the drawing were intended to indicate the color gray as a feature of the mark. Applicant has attached a new drawing of the mark in black and white only, with the gray tones deleted.

Applicant submits that it has responded to all outstanding issues raised in the Office Action. Accordingly, the final refusal should be removed and the application should be approved for publication.

GOODS AND/OR SERVICES SECTION (no change)

SIGNATURE SECTION

SIGNATURE	/JVH/
SIGNATORY NAME	Jeffrey L. Van Hoosear
SIGNATORY POSITION	Attorney for Applicant
SIGNATORY DATE	12/23/2004
SIGNATURE	/JVH/
SIGNATORY NAME	Jeffrey L. Van Hoosear
SIGNATORY POSITION	Attorney for Applicant
SIGNATORY DATE	12/23/2004

FILING INFORMATION SECTION

SUBMIT DATE	Thu Dec 23 15:22:51 EST 2004
TEAS STAMP	USPTO/OA-67133124210-2004 1223152251703119-78336665 -200e31763647719a4f48d42d 686fdbdb417-N-N-200412231 45155286609

Response to Office Action

To the Commissioner for Trademarks:

Application serial no. 78336665 is amended as follows:

Applicant proposes to amend the mark as follows:
Original: SLEEMAN CREAM ALE (Stylized and/or with Design)
Proposed: (Stylized and/or with Design, see mark)

In response to the substantive refusal(s), please note the following:

The following amendments, remarks and request for reconsideration are submitted in response to the Office Action dated June 24, 2004:

Please amend the identification of goods

"Brewed alcoholic beverages in the nature of ale."

Applicant makes the following statements of record:

--No claim is made to the exclusive right to use the term "CREAM ALE" apart from the mark as shown.--

--Applicant claims ownership of Registration Nos. 2788633, 2345180, 2359808 and others.--

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REMARKS

The Examining Attorney has refused registration of Applicant's mark under Trademark Act Section 2(d), 15 U.S.C. § 1052(d), on the ground that, when used on the identified goods and services, the mark is likely to be confused with the mark shown in U.S. Trademark Registration No. 2262093.

Applicant respectfully submits that the mark is not confusingly similar to the cited mark.

As the Examining Attorney has stated, the controlling standard for determining the likelihood of confusion issue is set forth in In re E.I. DuPont de Nemours & Co., 476 F.2d 1357, 177 U.S.P.Q. 563 (C.C.P.A. 1973). Applicant maintains that a comparison of its mark and the cited marks, using the factors established by DuPont, clearly leads to the conclusion that there is no likelihood of confusion.

In applying the relevant factors in the instant case, it is clear that the differences between Applicant's mark and the cited marks when viewed in their entireties are more than sufficient to preclude a likelihood of customer confusion.

Thus, as described below, a proper comparison of Applicant's entire mark to the cited mark shows that the marks are quite dissimilar in overall appearance and commercial impression.

Applicant's mark is a two-dimensional representation of a can shaped like a beer barrel and featuring the distinct work SLEEMAN and the distinctive Sleeman Logo. The front of the can bears the design elements of a maple leaf, a beaver, along with the word SLEEMAN in bold capital letters inside a darker rectangle design, the word CREAM in script beneath the word SLEEMAN, and the word ALE in distinct capital letters below the word CREAM. The mark also features back ground elements.

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coloring which is typical of Heineken products.

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The Examining Attorney also requested a disclaimer of the term "CREAM ALE". Accordingly, Applicant has made such a disclaimer of record.

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The Examining Attorney requested that Applicant clarify whether the gray tones in the drawing were intended to indicate the color gray as a feature of the mark. Applicant has attached a new drawing of the mark in black and white only, with the gray tones deleted.

Applicant submits that it has responded to all outstanding issues raised in the Office Action. Accordingly, the final refusal should be removed and the application should be approved for publication.

Declaration of Signer

The applicant has a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the identified goods and/or services as of the filing date of the application. 37 C.F.R. Secs. 2.34(a)(2)(i); 2.34 (a)(3)(i); and 2.34(a)(4)(ii).

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. §1001, and that such willful false statements may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. §1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; that if the original application was submitted unsigned, that all statements in the original application and this submission made of the declaration signer's knowledge are true; and all statements in the original application and this submission made on information and belief are believed to be true.

Signature: /JVH/ Date: 12/23/2004

Signatory's Name: Jeffrey L. Van Hoosear

Signatory's Position: Attorney for Applicant

Response Signature

Signature: /JVH/ Date: 12/23/2004

Signatory's Name: Jeffrey L. Van Hoosear

Signatory's Position: Attorney for Applicant

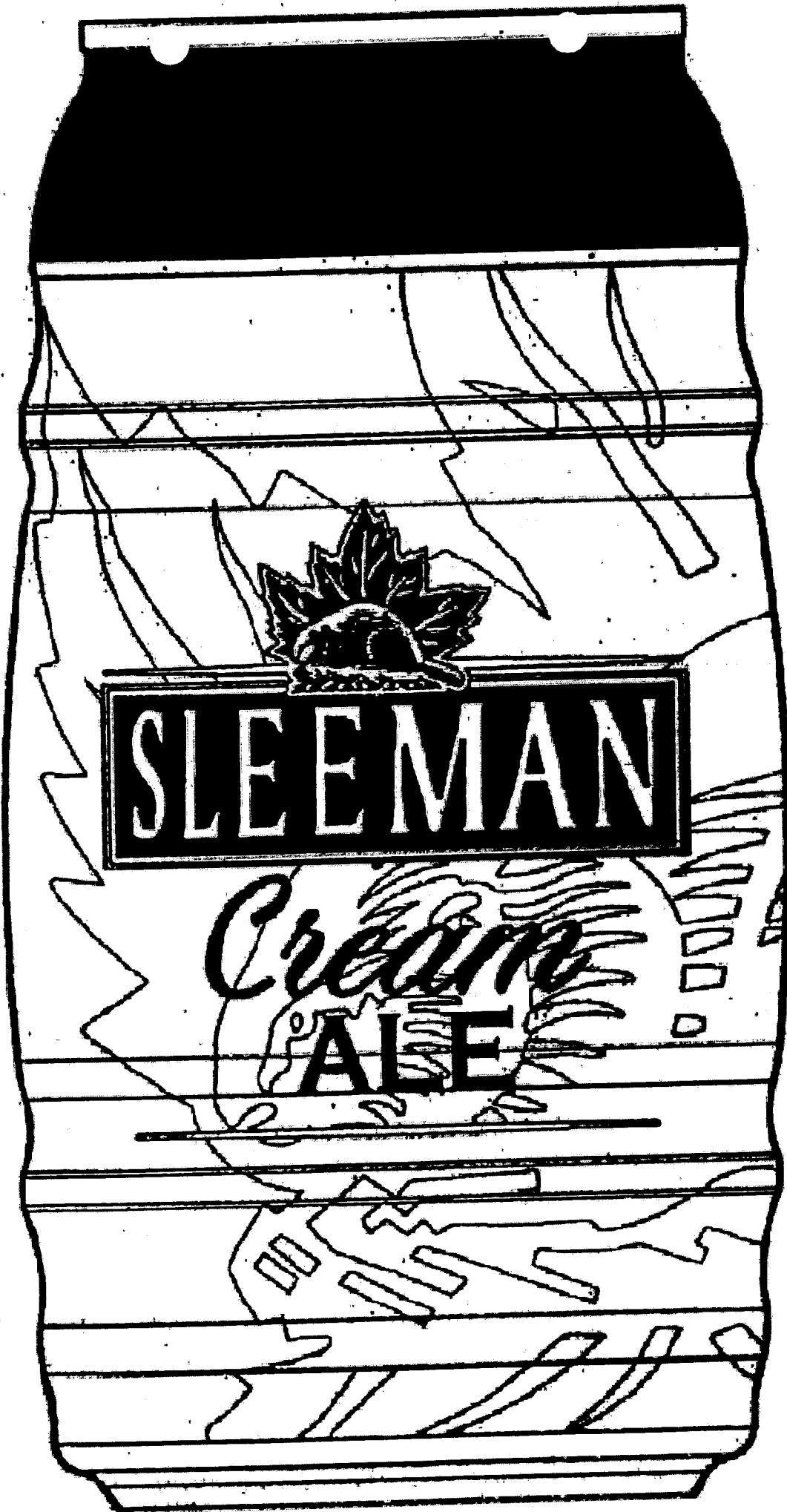
Serial Number: 78336665

Internet Transmission Date: Thu Dec 23 15:22:51 EST 2004

TEAS Stamp: USPTO/OA-67133124210-2004122315225170311

9-78336665-200e31763647719a4f48d42d686fd

bdb417-N-N-20041223145155286609



SLEEMAN

Cream
ALE

To: The Sleeman Brewing & Malting Co. Ltd. (efiling@kmob.com)
Subject: TRADEMARK APPLICATION NO. 78336665 - SLEEMAN CREAM ALE - SIMMC64.002T
Sent: 6/24/04 8:04:18 AM
Sent As: ECom113
Attachments: Attachment - 1
Attachment - 2
Attachment - 3

UNITED STATES PATENT AND TRADEMARK OFFICE

SERIAL NO: 78/336665

APPLICANT: The Sleeman Brewing & Malting Co. Ltd.

78336665

CORRESPONDENT ADDRESS:

Jeffrey L. Van Hoosear
KNOBBE MARTENS OLSON & BEAR LLP
14th Floor
2040 Main Street
Irvine, CA 92614

RETURN ADDRESS:

Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3514

MARK: SLEEMAN CREAM ALE

CORRESPONDENT'S REFERENCE/DOCKET NO: SIMMC64.002T

CORRESPONDENT EMAIL ADDRESS:

efiling@kmob.com

Please provide in all correspondence:

1. Filing date, serial number, mark and applicant's name.
2. Date of this Office Action.
3. Examining Attorney's name and Law Office number.
4. Your telephone number and e-mail address.

OFFICE ACTION

TO AVOID ABANDONMENT, WE MUST RECEIVE A PROPER RESPONSE TO THIS OFFICE ACTION WITHIN 6 MONTHS OF OUR MAILING OR E-MAILING DATE.

Serial Number 78/336665

The assigned examining attorney has reviewed the referenced application and determined the following.

Likelihood of Confusion

The examining attorney refuses registration under Trademark Act Section 2(d), 15 U.S.C. §1052(d), because the applicant's mark, when used on or in connection with the identified goods, so resembles the mark in U.S. Registration No. 2262093 as to be likely to cause confusion, to cause mistake, or to deceive. TMEP §§1207.01 *et seq.* See the enclosed registration.

The examining attorney must analyze each case in two steps to determine whether there is a likelihood of confusion. First, the examining attorney must look at the marks themselves for similarities in appearance, sound, connotation and commercial impression. *In re E. I. DuPont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (C.C.P.A. 1973). Second, the examining attorney must compare the goods or services to determine if they are related or if the activities surrounding their marketing are such that confusion as to origin is likely. *In re August Storck KG*, 218 USPQ 823 (TTAB 1983); *In re International Telephone and Telegraph Corp.*, 197 USPQ 910 (TTAB 1978); *Guardian Products Co., v. Scott Paper Co.*, 200 USPQ 738 (TTAB 1978). TMEP §§1207.01 *et seq.*

The applicant seeks registration of SLEEMAN CREAM ALE and Design and a design and possible configuration of a beer can. The mark in U.S. Registration No. 2262093 is the design of a beer can.

The marks are compared for similarities in sound, appearance, meaning or connotation. *In re E. I. DuPont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (C.C.P.A. 1973). Similarity in any one of these elements is sufficient to find a likelihood of confusion. *In re Mack*, 197 USPQ 755 (TTAB 1977); TMEP §§1207.01(b) *et seq.* In this case, the registered mark consists of a beer can. The can is designed to appear as a miniature beer barrel, with ridges on the top and bottom portions of the can. The applicant's mark appears to include the shape of the beer can, and it contains similar ridges in essentially the identical locations as the registered mark. The wording on the can is insufficient to distinguish the marks as consumers would likely conclude that both types of beers originate from the same source. For this reason, the marks are confusingly similar.

The goods are essentially identical, as cream ale is a type of beer. Further, if the goods or services of the respective parties are closely related, the degree of similarity between marks required to support a finding of likelihood of confusion is not as great as would apply with diverse goods or services. *Century 21 Real Estate Corp. v. Century Life of America*, 23 USPQ2d 1698 (Fed. Cir. 1992); *In re J.M. Originals Inc.*, 6 USPQ2d 1393 (TTAB 1987); *ECI Division of E-Systems, Inc. v. Environmental Communications Inc.*, 207 USPQ 443 (TTAB 1980); TMEP §1207.01(b).

Because both the marks and the goods are similar, registration is refused under Section 2(d).

Although the examining attorney has refused registration, the applicant may respond to the refusal to register by submitting evidence and arguments in support of registration.

If the applicant chooses to respond to the refusal to register, the applicant must also respond to the following issues.

Identification of Goods

The identification of goods is unacceptable as indefinite because it uses broad categories of goods that require further clarification. TMEP §1402.01. Based upon the specimen of use, the applicant may adopt the following identification, if accurate:

"brewed alcoholic beverages in the nature of ale," in International Class 032.

Please note that, while an application may be amended to clarify or limit the identification, additions to the identification are not permitted. 37 C.F.R. §2.71(a); TMEP §1402.06. Therefore, the applicant may not amend to include any goods that are not within the scope of goods set forth in the present identification.

Disclaimer

The applicant must disclaim the descriptive wording "CREAM ALE" apart from the mark as shown. Trademark Act Section 6, 15 U.S.C. §1056; TMEP §§1213 and 1213.03(a). The wording is merely descriptive because cream ale is a type of beer. See attached.

The computerized printing format for the *Trademark Official Gazette* requires a standard form for a disclaimer. TMEP §1213.08(a)(i). A properly worded disclaimer should read as follows:

No claim is made to the exclusive right to use "CREAM ALE" apart from the mark as shown.

See *In re Owatonna Tool Co.*, 231 USPQ 493 (Comm'r Pats. 1983).

Ownership of Prior Registrations

If the applicant is the owner of Registration Nos. 27888615, 2345180, 2359808 and others, the applicant must submit a claim of ownership. 37 C.F.R. §2.36; TMEP §812.

Drawing

Applicant must submit a new drawing showing the entire mark clearly and conforming to 37 C.F.R. §§2.52. The current drawing is not acceptable because the depiction of the mark is unclear; the drawing is a photocopy of the mark that will not reproduce satisfactorily. TMEP §807.07(a). Specifically, large portions of the design appear to be mottled or dark, such that the drawing cannot be clearly seen. Further, it is unclear whether there is additional wording present on the design.

Applicant must clarify whether the gray tones in the drawing are intended to indicate the color gray.

- (1) If the color gray is a feature of the mark, then applicant must submit a color claim and description as follows: "The color gray is a feature of the mark. The color gray appears in <specify where color gray appears>." 37 C.F.R. §§2.52(b) and (b)(1).
- (2) If the color gray indicates shading only, then applicant must submit a new drawing showing the mark in black and white only, with the gray tones deleted.

The requirements for a special-form drawing are as follows:

- # The drawing must appear in black and white if color is not claimed as a feature of the mark, or in color if color is claimed as a feature of the mark.

Drawings must be typed or made with a pen or by a process that will provide high definition when copied. A photolithographic, printer's proof copy, or other high quality reproduction of the mark may be used. All lines must be clean, sharp and solid, and must not be fine or crowded.

The image must be no larger than 3.15 inches (8 cm) high by 3.15 inches (8cm) wide.

If reduction of the mark to the required size renders any details illegible, then applicant may insert a statement in the application to describe the mark and these details.

37 C.F.R. §§2.52(b); See TMEP §§807.01(b) and 807.07(a).

If submitted on paper, the Office prefers that the drawing be depicted on a separate sheet of non-shiny, white paper that is 8 to 8.5 inches wide and 11 to 11.69 inches long (20.3 to 21.6 cm. wide and 27.9 to 29.7 cm. long). One of the shorter sides of the sheet should be regarded as its top edge. In addition, the drawing should include the caption "DRAWING PAGE" at the top of the drawing beginning one-inch (2.5 cm) from the top edge. 37 C.F.R. §2.54.

To submit a special form drawing electronically, applicant must attach a digitized image of the mark to the submission. The image must be formatted at no less than 300 dots per inch and no more than 350 dots per inch; and with a length and width of no less than 250 pixels and no more than 944 pixels. All lines in the image must be clean, sharp and solid, and not fine or crowded, and produce a high quality image when copied. 37 C.F.R. §2.53.

The Office strictly enforces these drawing requirements.

Further, it is unclear whether applicant is seeking registration for a configuration of the beer can. If applicant is seeking to register a configuration of the goods or their packaging or a specific design feature of the goods or packaging, then applicant should note the following additional requirements concerning the drawing for such cases. The drawing should present a single three-dimensional view of the goods or packaging showing in solid lines those features which applicant claims as its mark and the remainder of the drawing in broken or dotted lines. *In re Water Gremlin Co.*, 635 F.2d 841, 208 USPQ 89 (C.C.P.A. 1980); *In re Famous Foods, Inc.*, 217 USPQ 177 (TTAB 1983); 37 C.F.R. §2.52(b)(4); TMEP §§807.10 and 807.12. In addition to these drawing requirements, a clear and concise description of the features claimed as the mark should also be included in such an application. 37 C.F.R. §2.37; TMEP §§807.12 and 1202.02(d).

Potential Refusal — Nondistinctive Configuration of Packaging

The applicant is advised that upon consideration of an amendment to allege use or a statement of use, registration may be refused because the proposed mark comprises a nondistinctive configuration of the packaging for the goods and would not be perceived as a mark. As such, the proposed mark is not registrable on the Principal Register without proof of acquired

distinctiveness. Trademark Act Sections 1, 2 and 45, 15 U.S.C. §§1051, 1052 and 1127; *In re Mogen David Wine Corp.*, 372 F.2d 539, 152 USPQ 593 (C.C.P.A. 1967); *In re McIlhenny Co.*, 278 F.2d 953, 126 USPQ 138 (C.C.P.A. 1960); TMEP §1202.02(b)(ii).

In *Wal-Mart Stores, Inc. v. Samara Brothers, Inc.*, 529 U.S. 205, 215, 54 USPQ2d 1065, 1069 (2000), the Supreme Court distinguished between two types of trade dress - product design and product packaging. If the trade dress falls within the category of product design, it can *never* be inherently distinctive.

Product design almost invariably serves purposes other than source identification, and consumers are aware that even the most unusual product design is intended not to identify the source, but to render the product itself more useful or appealing. *Wal-Mart Stores, Inc. v. Samara Brothers, Inc.*, 529 U.S. 205, 54 USPQ2d 1065 (2000). See also *Textron, Inc. v. U.S. International Trade Commission*, 753 F.2d 1019, 224 USPQ 625 (Fed. Cir. 1985); *In re Craigmyle*, 224 USPQ 791 (TTAB 1984); TMEP §1202.02(b)(i).

Unlike product design, product packaging may be inherently distinctive and registrable on the Principal Register without a showing of acquired distinctiveness. However, in close cases in which it is difficult to determine whether the trade dress at issue is product packaging or product design, "courts should err on the side of caution and classify ambiguous trade dress as product design, thereby requiring secondary meaning." *Wal-Mart*, 529 U.S. at 215, 54 USPQ2d at 1070.

Note: If the trade dress is functional, it cannot be registered despite acquired distinctiveness. *TrafFix Devices, Inc. v. Marketing Displays, Inc.*, 532 U.S. 23, 58 USPQ2d 1001, 1007 (2001).

Applicant is also advised that for matter that does not inherently function as a mark because of its nature (e.g., nondistinctive product container shapes, overall color of a product, mere ornamentation), evidence of five years' use is *not* sufficient to show acquired distinctiveness. In such a case, actual evidence that the matter is perceived as a mark for the relevant goods or services would be required to establish distinctiveness. See generally *In re Owens-Corning Fiberglas Corp.*, 774 F.2d 1116, 227 USPQ 417 (Fed. Cir. 1985) (color pink as uniformly applied to applicant's fibrous glass residential insulation); *In re R.M. Smith, Inc.*, 734 F.2d 1482, 222 USPQ 1 (Fed. Cir. 1984) (configuration of pistol grip water nozzle for water nozzles); *Edward Weck Inc. v. IM Inc.*, 17 USPQ2d 1142 (TTAB 1990) (color green for medical instruments); *In re Cabot Corp.*, 15 USPQ2d 1224 (TTAB 1990) (configuration of a pillow-pack container for ear plugs and configuration of a pillow-pack container with trade dress [white circle surrounded by blue border] for ear plugs).

Potential Refusal – Functionality

In view of the nature of the proposed mark, applicant is advised that, upon consideration of an amendment to allege use or statement of use, registration may be refused under Trademark Act Section 2(e)(5), 15 U.S.C. §1052(e)(5), on the ground that the proposed configuration mark is functional for the identified goods. That is, the proposed mark may comprise the configuration of a design feature of the identified goods that serves a utilitarian purpose. *TrafFix Devices, Inc. v. Marketing Displays, Inc.*, 532 U.S. 23, 58 USPQ2d 1001 (2001); *Valu Engineering, Inc. v. Rexnord Corp.*, 61 USPQ2d 1422 (Fed. Cir. 2002); *In re Bose Corp.*, 772 F.2d 866, 227 USPQ 1 (Fed. Cir. 1985); *In re R.M. Smith, Inc.*, 734 F.2d 1482, 222 USPQ 1 (Fed. Cir. 1984); TMEP §§1202.02(a) *et seq.*

A feature is functional as a matter of law if it is "essential to the use or purpose of the product or if it affects the cost or quality of the product." *TrafFix Devices, Inc. v. Marketing Displays, Inc.*, 532 U.S. 23, 58 USPQ2d 1001, 1006 (2001); *Qualitex Co. v. Jacobson Products Co., Inc.*, 514 U.S. 159, 34 USPQ2d 1161, 1163-64 (1995); *Inwood Laboratories, Inc. v. Ives Laboratories, Inc.*, 456 U.S. 844, 214 USPQ 1, 4 n.10 (1982).

A mark comprising the configuration of goods or their packaging is held functional, and thus unregistrable, where the evidence shows that the product design or product packaging design provides identifiable utilitarian advantages to the user – i.e., where the product or container “has a particular shape because it works better in that shape.” *Valu Engineering, Inc. v. Rexnord Corp.*, 61 USPQ2d 1422, 1425 (Fed. Cir. 2002) (citation and internal quotation marks omitted); *In re R.M. Smith, Inc.*, 734 F.2d 1482, 222 USPQ 1, 3 (Fed. Cir. 1984); see also *In re Virshup*, 42 USPQ2d 1403, 1405 (TTAB 1997); *In re Cabot Corp.*, 15 USPQ2d 1224, 1227 (TTAB 1990).

In order for a proposed mark to be held functional, the evidence need *not* establish that the configuration at issue is the very best design for the particular product or product packaging. Rather, a finding of functionality is proper where the evidence indicates that the configuration at issue provides specific utilitarian advantages that make it one of a few superior designs available. See, e.g., *In re Bose Corp.*, 772 F.2d 866, 227 USPQ 1 (Fed. Cir. 1985); *In re American National Can Co.*, 41 USPQ2d 1841 (TTAB 1997); *In re Lincoln Diagnostics Inc.*, 30 USPQ2d 1817 (TTAB 1994); *In re Bio-Medicus Inc.*, 31 USPQ2d 1254 (TTAB 1993); *In re Cabot Corp.*, 15 USPQ2d 1224 (TTAB 1990); *In re Peters*, 6 USPQ2d 1390 (TTAB 1988).

On the other hand, where the evidence shows that the specific product or container configuration at issue provides no real utilitarian advantages to the user, but rather is simply one of many equally feasible, efficient and competitive designs, then the mark may be registrable. *In re Morton-Norwich Products, Inc.*, 671 F.2d 1332, 213 USPQ 9 (C.C.P.A. 1982); TMEP §§1202.02(b)(i) and 1202.02(b)(ii). However, a product configuration is not inherently distinctive, and therefore cannot be registered on the Principal Register without a showing of acquired distinctiveness under §2(f). *Wal-Mart Stores, Inc. v. Samara Brothers, Inc.*, 529 U.S. 205, 54 USPQ2d 1065 (2000).

Applicant must provide the following information and documentation in order to permit proper examination of the application. 37 C.F.R. §2.61(b):

- (1) A written statement as to whether the proposed mark is or has been *the subject of either a design or utility patent*, including existing and/or expired patents. Applicant must also state whether the proposed mark is or has been the subject of a patent application for either a design or utility patent, including both pending and abandoned patent applications. For any of the above for which a positive response is provided, the applicant must provide copies of the patent(s) or pending or abandoned patent application(s).
- (2) Any available *advertising, promotional and/or explanatory materials concerning the configuration* for which registration is sought, particularly any materials specifically related to the design feature(s) embodied in the proposed mark.
- (3) A written explanation and any relevant evidence as to *whether alternative designs are available for the feature(s) embodied in the proposed mark*, as well as whether the alternative designs are equally efficient and/or competitive. Applicant must also include a written explanation and any available information concerning designs used by competitors.
- (4) A written statement as to whether the product design or product packaging design at issue results from a *comparatively simple or inexpensive method of manufacture in relation to alternative designs* for the product/container. If applicant has any relevant information regarding the method and/or cost of manufacture, that information must also be provided.

Applicant may also furnish any *other* evidence that applicant considers relevant to the registrability of the proposed configuration mark.

With regard to the above requested information, it is noted that the Board and courts have recognized that relevant technical information is usually more readily available to an applicant, and that the applicant will thus normally be the source of most of the evidence pertaining to the functionality issue. *In re Teledyne Industries Inc.*, 696 F.2d 968, 971, 217 USPQ 9, 11 (Fed. Cir. 1982); *In re Witco Corp.*, 14 USPQ2d 1557, 1560 (TTAB 1989); *In re Babies Beat Inc.*, 13 USPQ2d 1729, 1731 (TTAB 1990) (registration properly refused where applicant failed to comply with trademark examining attorney's request for copies of patent applications and other patent information); *See* TMEP §§1202.02(a)(v) *et seq.*

If the applicant has any questions or needs assistance in responding to this Office action, please telephone the assigned examining attorney.

/Michael P. Keating/

Trademark Attorney

Law Office 113

(703) 308-9113 x232

(703) 746-8113 (fax)

How to respond to this Office Action:

To respond formally using the Office's Trademark Electronic Application System (TEAS), visit <http://www.uspto.gov/teas/index.html> and follow the instructions.

To respond formally via regular mail, your response should be sent to the mailing Return Address listed above and include the serial number, law office and examining attorney's name on the upper right corner of each page of your response.

To check the status of your application at any time, visit the Office's Trademark Applications and Registrations Retrieval (TARR) system at <http://tarr.uspto.gov/>

For general and other useful information about trademarks, you are encouraged to visit the Office's web site at <http://www.uspto.gov/main/trademarks.htm>

FOR INQUIRIES OR QUESTIONS ABOUT THIS OFFICE ACTION, PLEASE CONTACT THE ASSIGNED EXAMINING ATTORNEY.

Print: Jun 24, 2004

71119114

DESIGN MARK

Serial Number
71119114

Status
CANCELLATION PENDING

Word Mark
CHALLENGE

Standard Character Mark
No

Registration Number
0128939

Date Registered
1920/01/20

Type of Mark
TRADEMARK

Register
PRINCIPAL

Mark Drawing Code
(3) DESIGN PLUS WORDS, LETTERS AND/OR NUMBERS

Owner
CHALLENGE DAIRY PRODUCTS, INC. CORPORATION CALIFORNIA SUITE B200 11875
DUBLIN BOULEVARD DUBLIN CALIFORNIA 94568

Goods/Services
Class Status -- ACTIVE. IC 001 005 029 030 031 032. US 046. G & S:
CONDENSED MILK. First Use: 1890/11/20. First Use In Commerce:
1890/11/20.

Filing Date
1919/06/02

Examining Attorney
UNKNOWN

Attorney of Record
M. JOHN CARSON



America's World-Class Beer™

Beer • Sam Adams Light • Activities • E-Store • Company



Beer

[Samuel Adams Styles](#) • [Style Comparisons](#)

[Recipes](#) • [Pairings](#) • [Glossary](#) • [Process](#) • [History](#) • [Distribution](#) • [Tours](#) • [About Beer](#)

Beer Glossary: C

A B C D E F G H I J K L M N O P Q R S T U V W X Y Z

Caramel Malt:

A sweet, coppery malt which imparts both color and flavor to beer. Gives a golden color and a nutlike flavor to beer. Used frequently in darker ales. Also called crystal malt.

Carbonation:

Sparkle caused by carbon dioxide, either created during fermentation or injected later.

Cask Conditioned/Bottle Conditioned:

Beer with the yeast left in the brew to complete the fermentation in the cask or bottle.

Chocolate Malt:

Similar to black malt but roasted to a lesser, chocolate-brown color.

Cold Break:

The precipitation of protein and tannin material to a fine coagulum during the cooling stage. Also: Haze caused by protein matter which must be strained after the cooling process.

Conditioning Tank:

An airtight tank in which a beer's secondary fermentation occurs.

Cooling:

The wort is cooled to the desired temperature for starting fermentation in a holding tank or whirlpool.

Craft Beers:

Beers made by small, independent brewers with only traditional brewing ingredients such as malt, hops, yeast and water, and brewed with traditional brewing methods.

Cream Ale:

A blend of top- and bottom-fermented beers, resulting in a sweet and lightly hopped brew.

Crystal Malt:

Synonym for caramel malt.

A B C D E F G H I J K L M N O P Q R S T U V W X Y Z



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*** User:mkeating ***

#	Total Marks	Dead Marks	Live Viewed Docs	Live Viewed Images	Status/ Search Duration	Search
01	1	0	1	1	0:02	78336665[SN]
02	457	N/A	0	0	0:02	"190717"[dc]
03	173	0	173	173	0:06	2 not dead[id]

Session started 6/24/04 7:39:16 AM

Session finished 6/24/04 7:49:26 AM

Total search duration 0 minutes 10 seconds

Session duration 10 minutes 10 seconds

Default NEAR limit=1ADJ limit=1

Sent to TICRS as Serial Number: 78336665

*** User:mkeating ***

#	Total Marks	Dead Marks	Live Viewed Docs	Live Viewed Images	Status/ Search Duration	Search
01	1	0	1	1	0:02	78336664[SN]
02	35	21	14	12	0:01	"sleeman"[on]
03	21	11	10	10	0:02	*sleeman*[bi,ti]
04	57	34	23	11	0:02	*{"sz"}lsman*[bi,ti]
05	2891	N/A	0	0	0:02	*{"sz"}lee*[bi,ti]
06	57675	N/A	0	0	0:02	*man*[bi,ti]
07	18	0	18	12	0:02	(5 and 6) not dead[ld]
08	887	N/A	0	0	0:02	"050303"[dc]
09	1031	N/A	0	0	0:01	"030902"[dc]
10	92256	N/A	0	0	0:01	"261121"[dc]
11	93	45	2	48	0:01	8 and (9 or 10)
12	12	0	2	12	0:02	(9 and 10) not dead[ld]
13	853	N/A	0	0	0:02	(8 or 9) not dead[ld]
14	339	0	3	339	0:05	13 and "032"[cc]

Session started 6/22/04 3:33:42 PM

Session finished 6/22/04 4:22:12 PM

Total search duration 0 minutes 27 seconds

Session duration 48 minutes 30 seconds

Default NEAR limit=1 ADJ limit=1

Sent to TIGRS as Serial Number: 78336665

Drawing Page

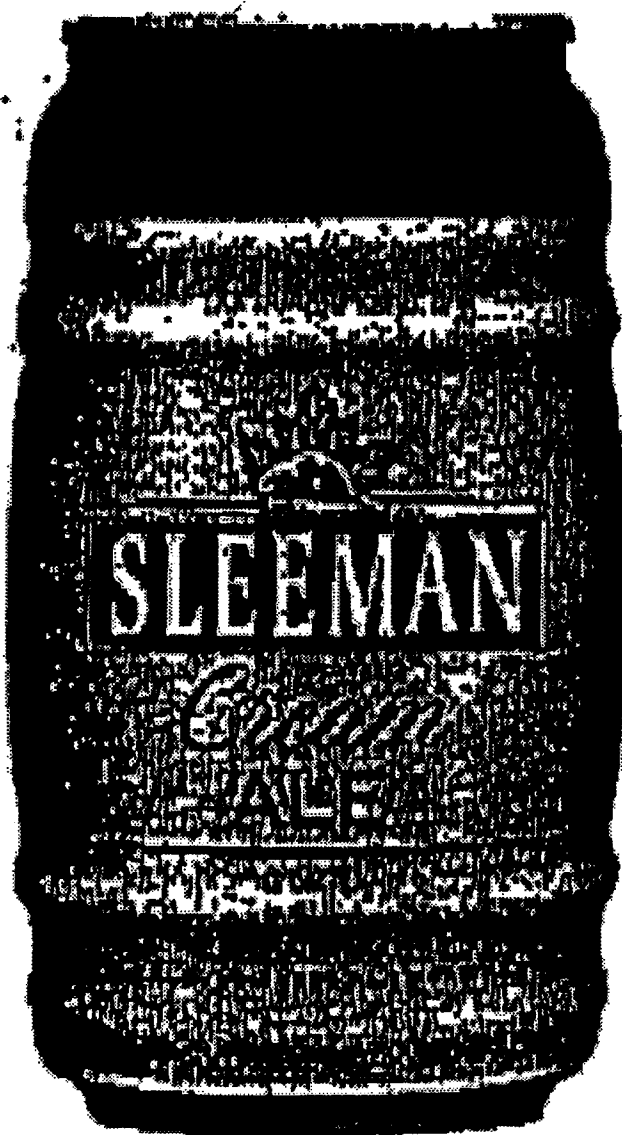
Date/Time Stamp: 12/04/2003 18:48:5



Serial Number: 78336665



Mark (Applicant-generated image):



SLEEMAN

PALE

Trademark/Service Mark Application, Principal Register

Serial Number: 78336665

Filing Date: 12/04/2003

The table below presents the data as entered.

MARK SECTION	
MARK FILE NAME	\\ticters\EXPORT8\IMAGEOUT8\783\366\78336665\xml1\AP P0002.JPG
STANDARD CHARACTERS	NO
USPTO-GENERATED IMAGE	NO
LITERAL ELEMENT	SLEEMAN CREAM ALE
COLOR MARK	NO
DESCRIPTION OF THE MARK	The mark consists of the stylized words Sleeman Cream Ale and a design of a beer can.
PIXEL COUNT ACCEPTABLE	YES
PIXEL COUNT	444 x 780
OWNER SECTION	
NAME	The Sleeman Brewing & Malting Co. Ltd.
STREET	551 Clair Road West
CITY	Guelph
STATE	Ontario
ZIP/POSTAL CODE	N1H 5H9
COUNTRY	Canada
PHONE	949 760 0404
FAX	949 760 9502
EMAIL	efiling@kmob.com
AUTHORIZED EMAIL COMMUNICATION	Yes
LEGAL ENTITY SECTION	
TYPE	CORPORATION
STATE/COUNTRY OF INCORPORATION	Canada
GOODS AND/OR SERVICES SECTION	

INTERNATIONAL CLASS	032
DESCRIPTION	Brewed alcoholic beverages
FILING BASIS	Section 1(b)
SIGNATURE SECTION	
SIGNATURE	/Don Rogozynski/
SIGNATORY NAME	Don Rogozynski
SIGNATORY DATE	12/02/2003
SIGNATORY POSITION	Secretary
PAYMENT SECTION	
NUMBER OF CLASSES	1
NUMBER OF CLASSES PAID	1
SUBTOTAL AMOUNT	335
TOTAL AMOUNT	335
ATTORNEY	
NAME	Jeffrey L. Van Hoosear
FIRM NAME	KNOBBE MARTENS OLSON & BEAR LLP
INTERNAL ADDRESS	14th Floor
STREET	2040 Main Street
CITY	Irvine
STATE	CA
ZIP/POSTAL CODE	92614
COUNTRY	USA
PHONE	949 760 0404
FAX	949 760 9502
EMAIL	efiling@kmob.com
AUTHORIZED EMAIL COMMUNICATION	Yes
ATTORNEY DOCKET NUMBER	SIMMC64.002TUS
OTHER APPOINTED ATTORNEY(S)	Louis J. Knobbe, Don W. Martens, Gordon H. Olson, James B. Bear, Darrell L. Olson, William B. Bunker, William H. Nieman, Arthur S. Rose, James F. Lesniak, Ned A. Israelsen, Drew S. Hamilton, Jerry T. Sewell, John B. Sganga, Jr., Edward A. Schlatter, Gerard von Hoffmann, Joseph R. Re, Catherine J. Holland, John M. Carson, Karen Vogel Weil, Andrew H. Simpson, Daniel E. Altman, Vito A. Canuso, Lynda J. Zadra-Symes, William H. Shreve, Stephen C. Jensen, Steven J. Nataupsky, Paul A. Stewart, Joseph F. Jennings, Craig S. Summers, AnneMarie Kaiser, Brenton R. Babcock, Thomas F. Smegal, Jr., Michael H. Trenholm, Diane M. Reed, Ronald J. Schoenbaum, John R. King, Frederick S. Berretta, Nancy Ways Vensko,

John P. Giezentanner, Adeel S. Akhtar, Thomas R. Arno, David N. Weiss, Dan Hart, Douglas G. Muehlhauser, Lori Lee Yamato, Michael K. Friedland, Dale C. Hunt, Richard E. Campbell, Paul D. Tripodi, Stacey R. Halpern, Lee W. Henderson, Mark M. Abumeri, Jon W. Gurka, John W. Holcomb, Joseph M. Reisman, Michael L. Fuller, Eric M. Nelson, Mark R. Benedict, Paul N. Conover, Robert J. Roby, Sabing H. Lee, Karoline A. Delaney, Joseph S. Cianfrani, William R. Zimmerman, Deborah S. Shepherd, Glen L. Nuttall, Tirzah Abé Lowe, Sanjivpal S. Gill, Susan M. Natland, Eric S. Furman, James W. Hill, Rose M. Thiessen, Michael A. Guiliana, Mark J. Kertz, Rabinder N. Narula, Bruce S. Itchkawitz, Michael S. Okamoto, John M. Grover, Mallary K. de Merlier, Irfan A. Lateef, Amy C. Christensen, Sharon S. Ng, Mark J. Gallagher, David G. Jankowski, Brian C. Horne, Payson J. LeMeilleur, Paul C. Steinhardt, Sheila N. Swaroop, Benjamin A. Katzenellenbogen, Linda H. Liu, Andrew N. Merickel, David L. Hauser, James F. Herkenhoff, Scott Loras Murray, Andrew M. Douglas, Marc T. Morley, Salima A. Merani, Sam K. Tahmassebi, Christy L. Green, Jonathan A. Hyman, Curtiss C. Dosier, Richard A. DeCristofaro, Joseph J. Mallon, Ph.D., Thomas P. Krzeminski, Sean M. Murray, Elenore Niu, Valerie L. Bracken, J. David Evered, Johnfar F. Kerlee, Jeremy P. Sanders, Perry D. Oldham, Jerry L. Hefner, Russell M. Jeide, Abraham W. Chuang, Ryan N. Farr, Pui Tong Ho, Erik T. Anderson, John L. Paik, Eric K. Morton, Jesse A. Rothwell, Marc C. Baumgartner, Raymond B. Hom, Danielle Klausner, Kyle F. Schlueter, Raphael A. Gutiérrez, Demian K. Jackson, Nathan A. Engels, Gregory A. Hermanson, Zi Y. Wong, John N. Kandara, Matthew S. Bellinger, David K. Wiggins, Darryl H. Steensma, Lauren Keller, Ted M. Cannon, Carol M. Pitzel, Josué A. Villalta, Sheila R. Gibson, Andrew I. Kimmel, Miika Fukuwa, Curtis R. Huffmire, and Tina Chen

DOMESTIC REPRESENTATIVE SECTION

NAME	Jeffrey L. Van Hoosear
FIRM NAME	KNOBBE MARTENS OLSON & BEAR LLP
INTERNAL ADDRESS	14th Floor
STREET	2040 Main Street
CITY	Irvine
STATE	CA
ZIP/POSTAL CODE	92614
COUNTRY	USA
PHONE	949 760 0404
FAX	949 760 9502
EMAIL	efiling@knob.com
AUTHORIZED EMAIL COMMUNICATION	Yes

CORRESPONDENCE SECTION

NAME	Jeffrey L. Van Hoosear
FIRM NAME	KNOBBE MARTENS OLSON & BEAR LLP
INTERNAL ADDRESS	14th Floor
STREET	2040 Main Street
CITY	Irvine

STATE	CA
ZIP/POSTAL CODE	92614
COUNTRY	USA
PHONE	949 760 0404
FAX	949 760 9502
EMAIL	efiling@kmob.com
AUTHORIZED EMAIL COMMUNICATION	Yes
FILING INFORMATION	
SUBMIT DATE	Thu Dec 04 19:00:57 EST 2003
TEAS STAMP	USPTO/BAS-20845168140-200 31204190057893528-7833666 5-200f148e1891ff6a2642553 6427cb1aaf56-DA-544-20031 204184858748953

PTO Form 1475 (Rev 4/98)

OM13 Control #0651-000* (Exp 06/30/2005)

Trademark/Service Mark Application, Principal Register

Serial Number: 78336665

Filing Date: 12/04/2003

To the Commissioner for Trademarks:

MARK: SLEEMAN CREAM ALE (stylized and/or with design, see mark)

The literal element of the mark consists of SLEEMAN CREAM ALE.

The mark consists of the stylized words Sleeman Cream Ale and a design of a beer can.

The applicant, The Sleeman Brewing & Malting Co. Ltd., a corporation of Canada, residing at 551 Clair Road West, Guelph, Ontario, Canada, N1H 5H9, requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended.

Intent to Use: The applicant has a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the identified goods and/or services. (15 U.S.C. Section 1051(b)).

International Class 032: Brewed alcoholic beverages

The applicant hereby appoints Jeffrey L. Van Hoosear and Louis J. Knobbe, Don W. Martens, Gordon H. Olson, James B. Bear, Darrell L. Olson, William B. Bunker, William H. Nieman, Arthur S. Rose, James F. Lesniak, Ned A. Israelsen, Drew S. Hamilton, Jerry T. Sewell, John B. Sganga, Jr., Edward A. Schlatter, Gerard von Hoffmann, Joseph R. Re, Catherine J. Holland, John M. Carson, Karen Vogel Weil, Andrew H. Simpson, Daniel E. Altman, Vito A. Canuso, Lynda J. Zadra-Symes, William H. Shreve, Stephen C. Jensen, Steven J. Nataupsky, Paul A. Stewart, Joseph F. Jennings, Craig S. Summers, AnneMarie Kaiser, Brenton R. Babcock, Thomas F. Smegal, Jr., Michael H. Trenholm, Diane M. Reed, Ronald J. Schoenbaum, John R. King, Frederick S. Berretta, Nancy Ways Vensko, John P. Giezentanner, Adeel S. Akhtar, Thomas R. Arno, David N. Weiss, Dan Hart, Douglas G. Muehlhauser, Lori Lee Yamato, Michael K. Friedland, Dale C. Hunt, Richard E. Campbell, Paul D. Tripodi, Stacey R. Halpern, Lee W. Henderson, Mark M. Abumeri, Jon W. Gurka, John W. Holcomb, Joseph M. Reisman, Michael L. Fuller, Eric M. Nelson, Mark R.

Benedict, Paul N. Conover, Robert J. Roby, Sabing H. Lee, Karoline A. Delaney, Joseph S. Cianfrani, William R. Zimmerman, Deborah S. Shepherd, Glen L. Nuttall, Tirzah Abé Lowe, Sanjivpal S. Gill, Susan M. Natland, Eric S. Furman, James W. Hill, Rose M. Thiessen, Michael A. Guiliiana, Mark J. Kertz, Rabinder N. Narula, Bruce S. Itchkawitz, Michael S. Okamoto, John M. Grover, Mallary K. de Merlier, Irfan A. Lateef, Amy C. Christensen, Sharon S. Ng, Mark J. Gallagher, David G. Jankowski, Brian C. Horne, Payson J. LeMeilleur, Paul C. Steinhardt, Sheila N. Swaroop, Benjamin A. Katzenellenbogen, Linda H. Liu, Andrew N. Merickel, David L. Hauser, James F. Herkenhoff, Scott Loras Murray, Andrew M. Douglas, Marc T. Morley, Salima A. Merani, Sam K. Tahmassebi, Christy L. Green, Jonathan A. Hyman, Curtiss C. Dosier, Richard A. DeCristofaro, Joseph J. Mallon, Ph.D., Thomas P. Krzeminski, Sean M. Murray, Elenore Niu, Valerie L. Bracken, J. David Evered, Johnfar F. Kerlee, Jeremy P. Sanders, Perry D. Oldham, Jerry L. Hefner, Russell M. Jeide, Abraham W. Chuang, Ryan N. Farr, Pui Tong Ho, Erik T. Anderson, John L. Paik, Eric K. Morton, Jesse A. Rothwell, Marc C. Baumgartner, Raymond B. Hom, Danielle Klausner, Kyle F. Schlueter, Raphael A. Gutiérrez, Demian K. Jackson, Nathan A. Engels, Gregory A. Hermanson, Zi Y. Wong, John N. Kandara, Matthew S. Belling, David K. Wiggins, Darryl H. Steensma, Lauren Keller, Ted M. Cannon, Carol M. Pitzel, Josué A. Villalta, Sheila R. Gibson, Andrew I. Kimmel, Miika Fukuwa, Curtis R. Huffmire, and Tina Chen of KNOBBE MARTENS OLSON & BEAR LLP, 14th Floor, 2040 Main Street, Irvine, CA, USA, 92614 to submit this application on behalf of the applicant. The attorney docket/reference number is SIMMC64.002TUS.

The applicant hereby appoints Jeffrey L. Van Hoosear of KNOBBE MARTENS OLSON & BEAR LLP, 14th Floor, 2040 Main Street, Irvine, CA, USA 92614 as applicant's representative upon whom notice or process in the proceedings affecting the mark may be served.

The USPTO is authorized to communicate with the applicant or its representative at the following email address: efiling@kmob.com.

A fee payment in the amount of \$335 will be submitted with the application, representing payment for 1 class(es).

Declaration

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.

Signature: /Don Rogozynski/ Date: 12/02/2003

Signatory's Name: Don Rogozynski

Signatory's Position: Secretary

Mailing Address:

Jeffrey L. Van Hoosear
14th Floor
2040 Main Street
Irvine, CA 92614

RAM Sale Number: 544

RAM Accounting Date: 12/05/2003

Serial Number: 78336665

Internet Transmission Date: Thu Dec 04 19:00:57 EST 2003

TEAS Stamp: USPTO/BAS-20845168140-200312041900578935

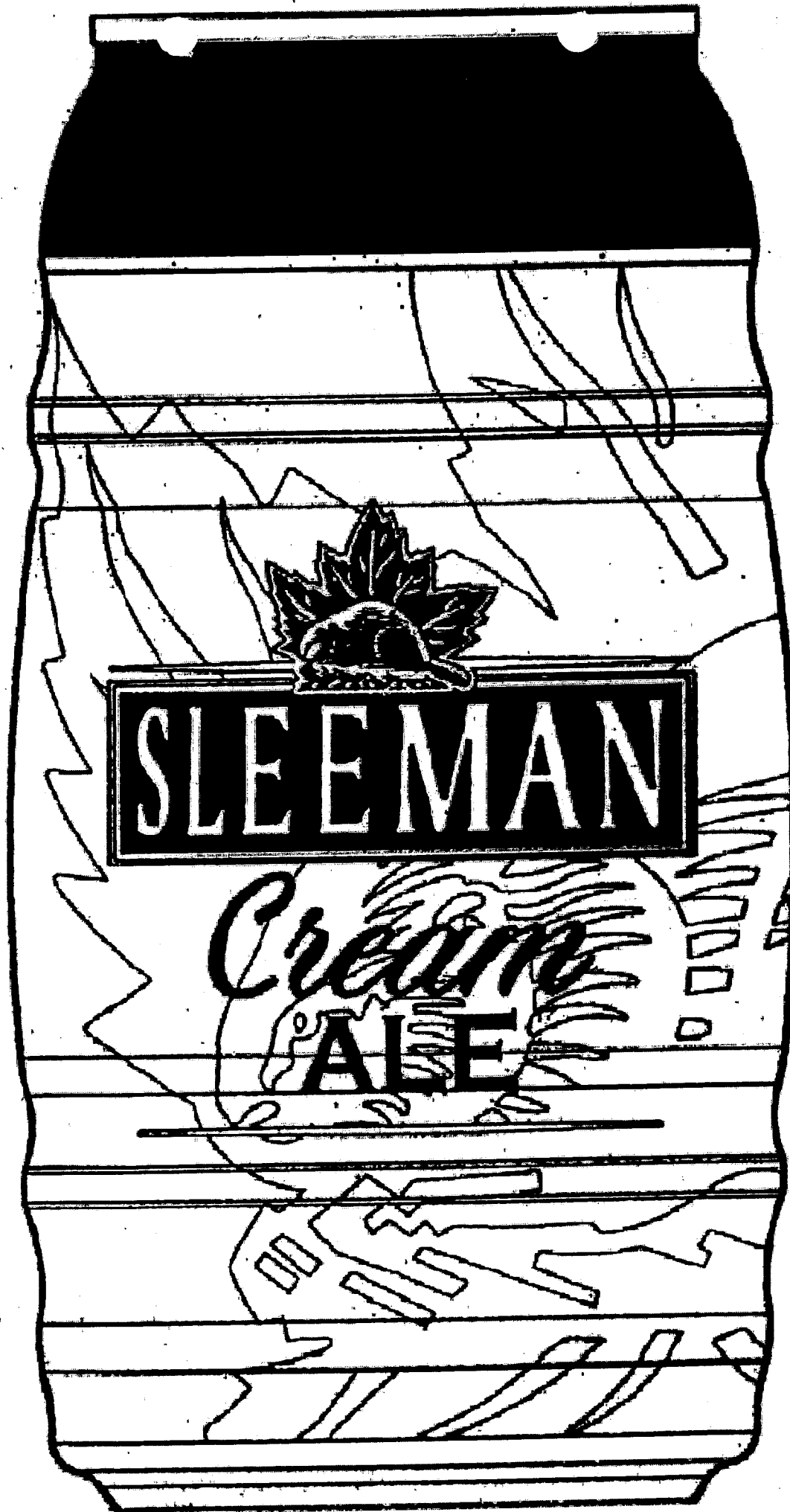
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b1aaf56-DA-544-20031204184858748953

SLEEMAN

**COCAINE
SALE**

EXHIBIT 2



SLEEMAN

Cream
ALE

EXHIBIT F

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Heineken Brouwerijen B.V.,

Opposer,

v.

The Sleeman Brewing & Malting Co. LTD.,

Applicant.

Opposition No. 91166542

In the Matter of Trademark
Application Serial No.: 78/336,665

Mark: SLEEMAN CREAM ALE &
CAN DESIGN

**APPLICANT'S RESPONSES TO OPPOSER'S FIRST SET
OF INTERROGATORIES (NOS. 1-26)**

Pursuant to the Rules of Practice of the United States Patent and Trademark Office, Rule 33 of the Federal Rules of Civil Procedure and the Trademark Trial and Appeal Board Manual of Procedure ("TBMP"), Applicant The Sleeman Brewing & Malting Co. Ltd. ("Applicant") hereby responds to Heineken Brouwerijen B.V.'s ("Opposer's") First Set of Interrogatories as follows:

GENERAL OBJECTIONS

The following general objections are incorporated by reference in response to each interrogatory set forth below and are not waived with respect to any response:

1. Applicant generally objects to Opposer's interrogatories to the extent they seek disclosure of any information, document, or thing protected, privileged, or immune, or otherwise exempt from discovery pursuant to applicable state and federal statutes, the FRCP, case law, regulations, administrative orders, or any other applicable rules, decisions, or laws including, but not limited to, documents protected by the attorney-client privilege, the work product doctrine, or any other applicable privilege.
2. Applicant generally objects to Opposer's interrogatories to the extent they purport to impose upon Applicant obligations greater than those imposed by the applicable FRCP, 37 CFR § 2.120(d), or other applicable rules or law.

3. Applicant generally objects to Opposer's interrogatories to the extent that they seek information that is not calculated to lead to the discovery of admissible evidence or to the extent that Opposer's Interrogatories seek the disclosure of information, documents or things beyond the scope of discovery as provided by the applicable FRCP, 37 CFR § 2.120(d), or other applicable rules or law.

4. Applicant further objects to these interrogatories to the extent that they seek information or documents that contain Applicant's confidential and proprietary information or information protected by the right to privacy. The parties have not yet requested the Trademark Trial and Appeal Board (the "TTAB") to enter a protective order in this action. Thus, subject to objections, and only upon entry of a suitable protective order, Applicant will produce such responsive, nonprivileged documents.

5. Applicant reserves the right to object to further inquiry with respect to the subject matter of the interrogatories and responses provided thereto.

6. Applicant objects to each of Opposer's interrogatories to the extent that they seek information that is a matter of public record or otherwise available to Opposer without undue burden on Opposer.

7. Applicant objects to the interrogatories to the extent they seek documents outside of Applicant's possession, custody, or control.

8. Applicant further objects to the interrogatories to the extent that they call for the information that is protected from disclosure by agreements Applicant has with another entity, if any, or obligations Applicant has to another entity, if any.

9. Applicant further objects to the interrogatories to the extent they fail to describe information sought with reasonable degree of specificity. Applicant will attempt to construe the terms and phrases used by Opposer in a way to give those terms and phrases a meaning that will result in the production of relevant information designed to lead to the discovery of admissible evidence.

10. Applicant further objects to the interrogatories to the extent they seek "all" information or documents or "each" document concerning a particular subject, on the grounds that Applicant would be required to conduct searches of undue breadth at undue burden and expense. In its search for relevant information, Applicant has made, or will make, a reasonable search as required by the FRCP and 37 CFR § 2.120(d).

11. As to all matters referred to in these responses to Opposer's interrogatories, investigation and discovery continues. Accordingly, Applicant reserves its right to modify these responses and to present in any proceedings and at trial any further information and documents obtained during discovery as well as during the testimony and trial periods and preparation for the testimony and trial periods. Further discovery, independent investigation, and legal research and analysis may supply additional facts adding meaning to known facts, as well as establish entirely new factual conclusions or legal conclusions, all of which may lead to substantial additions to, changes in, and variations from the responses set forth herein. Applicant reserves the right to produce any subsequently discovered evidence, facts, and/or documents, and to supplement or change its responses based on such information. The responses given herein are done so in good faith to supply as much information as is presently known which should in no way lead to the prejudice of Applicant in connection with further discovery, research or analysis.

12. Applicant generally objects to the terms "Opposer," "Applicant," "person" and persons" as vague, overly broad and unduly burdensome.

13. The information provided will not constitute an admission by Applicant that such documents are relevant to the pending opposition or a waiver of any other allowable objections. Accordingly, Applicant reserves the right to object to a further inquiry with respect to the subject matter of the Interrogatories and responses provided thereto.

14. As applicant is a foreign entity, it objects to interrogatories which exceed the scope of this proceeding.

15. "In commerce" was not defined in the First Set of Interrogatories. The term "in commerce" will mean "in commerce" as defined in Section 45 of the Lanham Act.

RESPONSES TO INTERROGATORIES

INTERROGATORY NO. 1:

State the address of each location at which Applicant maintains a place of business where Applicant's Products are promoted, sold, and/or distributed under Applicant's Mark.

RESPONSE TO INTERROGATORY NO. 1:

551 Clair Road West
Guelph, Ontario
Canada

INTERROGATORY NO. 2:

Identify each person responsible for the actual and/or intended promotion, distribution, and/or sale of Applicant's Products under Applicant's Mark.

RESPONSE TO INTERROGATORY NO. 2:

Applicant is still investigating in order to determine the answer to this interrogatory.

INTERROGATORY NO. 3:

State the date, if known, or the approximate date, if unknown, on which Applicant decided to adopt Applicant's Mark.

RESPONSE TO INTERROGATORY NO. 3:

Current information indicates that this date is approximately November 2003.

INTERROGATORY NO. 4:

Identify each person who conceived of Applicant's Mark for use by Applicant.

RESPONSE TO INTERROGATORY NO. 4:

Applicant is still investigating in order to determine the answer to this interrogatory.

INTERROGATORY NO. 5:

Identify, by common commercial descriptive name, each product actually and/or intended to be offered for sale, advertised, and/or promoted by or on behalf of Applicant bearing Applicant's Mark.

RESPONSE TO INTERROGATORY NO. 5:

Brewed alcoholic beverages, in the nature of ale.

INTERROGATORY NO. 6:

For each product identified in answer to Interrogatory No. 5, state the date or anticipated date of first use anywhere, and describe the circumstances surrounding such use.

RESPONSE TO INTERROGATORY NO. 6:

Applicant objects to this Interrogatory as it calls for information on Applicant's future plans. Notwithstanding this and the General Objections, Applicant has not used Applicant's Mark in commerce.

INTERROGATORY NO. 7:

For each product identified in answer to Interrogatory No. 5, state the date or anticipated date of first use in commerce, and describe the circumstances surrounding such use.

RESPONSE TO INTERROGATORY NO. 7:

Applicant objects to this Interrogatory as it calls for information on Applicant's future plans. Notwithstanding this and the General Objections, Applicant has not used Applicant's Mark in commerce.

INTERROGATORY NO. 8:

For each product identified in answer to Interrogatory No. 5, state, by calendar quarter, the dollar volume budgeted and/or expended by Applicant to promote Applicant's Mark in connection therewith.

RESPONSE TO INTERROGATORY NO. 8:

Applicant objects to this Interrogatory as it calls for information on Applicant's future plans. Applicant further objects to this Interrogatory as requiring disclosure of confidential and proprietary information. Notwithstanding this and the General Objections, Applicant has not used Applicant's Mark in commerce.

INTERROGATORY NO. 9:

For each product identified in answer to Interrogatory No. 5, state, by calendar quarter and by each state of the United States, the approximate income anticipated and/or received to date from sales of Applicant's Products bearing Applicant's Mark.

RESPONSE TO INTERROGATORY NO. 9:

Applicant has not used Applicant's Mark in commerce.

INTERROGATORY NO. 10:

Identify representative examples of each different promotional document and item used or considered for use by Applicant in connection with the promotion, distribution, and/or sale of Applicant's Products bearing Applicant's Mark.

RESPONSE TO INTERROGATORY NO. 10:

Applicant objects to this Interrogatory as it calls for information on Applicant's future plans. Notwithstanding this and the General Objections, Applicant has not used Applicant's Mark in commerce.

INTERROGATORY NO. 11:

Identify each search of any type conducted by or on behalf of Applicant in connection with its intent and/or decision to adopt, use, or apply for federal registration of Applicant's Mark.

RESPONSE TO INTERROGATORY NO. 11:

Applicant is not presently aware of any relevant search conducted by or on behalf of Applicant in connection with its intent and/or decision to adopt, use, or apply for federal registration of Applicant's Mark.

INTERROGATORY NO. 12:

State whether Applicant knew of Opposer's use and/or registration of Opposer's Mark identified in the Notice of Opposition prior to Applicant's intent and/or decision to adopt, use, or file for federal registration of Applicant's Mark.

RESPONSE TO INTERROGATORY NO. 12:

Applicant is likely to have been aware of Opposer's use of Opposer's Mark identified in the Notice of Opposition prior to Applicant's intent and/or decision to adopt, use, or file for federal registration of Applicant's Mark.

INTERROGATORY NO. 13:

If Applicant knew of Opposer's Mark identified in the Notice of Opposition prior to Applicant's intent and/or decision to adopt, use, or file for federal registration of Applicant's Mark, state whether Applicant considered the issue of, and/or received any opinions, advice, and/or counsel regarding, a likelihood of confusion between Applicant's Mark and Opposer's Mark.

RESPONSE TO INTERROGATORY NO. 13:

Applicant objects to this interrogatory on the grounds that it calls for information protected by privilege.

INTERROGATORY NO. 14:

Identify (by title, publisher, issue date, page number, and any other relevant designation), each printed and/or electronic publications in which Applicant has promoted and/or plans to promote Applicant's Products in connection with Applicant's Mark.

RESPONSE TO INTERROGATORY NO. 14:

Applicant has not used Applicant's Mark in commerce.

INTERROGATORY NO. 15:

Identify (by name, date and location) each trade show, trade fair, trade convention or other promotional trade venue in which Applicant has promoted and/or plans to promote its products in connection with Applicant's Mark.

RESPONSE TO INTERROGATORY NO. 15:

Applicant has not used Applicant's Mark in commerce.

INTERROGATORY NO. 16:

Identify all market research (including, but without limitation, surveys, studies, investigations, and/or focus group inquiries) conducted by or on behalf of Applicant regarding Applicant's Mark, and state the results thereof.

RESPONSE TO INTERROGATORY NO. 16:

Applicant is not presently aware of any relevant market research conducted by or on behalf of Applicant regarding Applicant's Mark.

INTERROGATORY NO. 17:

Identify, in order of approximate level of knowledge, each person who knows of any market research (including, but without limitation, surveys, studies, investigations and/or focus group inquiries) conducted by or on behalf of Applicant regarding Applicant's Mark, including the results thereof.

RESPONSE TO INTERROGATORY NO. 17:

Applicant is not aware of any relevant market research conducted by or on behalf of Applicant regarding Applicant's Mark.

INTERROGATORY NO. 18:

Identify Applicant's knowledge of each instance in which a person experienced actual confusion, initial interest (pre-sale) confusion, mistake, and/or deception between Applicant's Products promoted, distributed, and/or sold in connection with the Applicant's Mark and Opposer's Products promoted, distributed, and/or sold in connection with Opposer's Mark.

RESPONSE TO INTERROGATORY NO. 18:

Applicant has not used Applicant's Mark in commerce, and thus Applicant knows of no instances of actual confusion, initial interest confusion, mistake, and/or deception between Applicant's Products promoted, distributed, and/or sold in connection with the Applicant's Mark and Opposer's Products promoted, distributed, and/or sold in connection with Opposer's Mark.

INTERROGATORY NO. 19:

Identify each agreement, including, without limitation, each assignment, license, authorization, permission, and/or consent, entered into by Applicant regarding Applicant's Mark and/or Applicant's Products.

RESPONSE TO INTERROGATORY NO. 19:

Applicant objects to this interrogatory on the grounds that it is overly broad, burdensome, ambiguous, and requests information outside the scope of these proceedings that is not likely to lead to discoverable information. Applicant also objects to this interrogatory to the extent it requires disclaimer of confidential, proprietary or privileged information.

INTERROGATORY NO. 20:

Identify each channel of distribution and each geographical area of trade within which Applicant's Products are and/or are intended to be promoted, distributed, and/or sold in connection with Applicant's Mark.

RESPONSE TO INTERROGATORY NO. 20:

Applicant has not yet used Applicant's Mark in commerce. Applicant directs Opposer to its website www.sleeman.com and other publicly available documents in response to this inquiry.

INTERROGATORY NO. 21:

Identify each person who, and company that, has participated or participates in creating and/or distributing advertisements or marketing materials in the United States for Applicant's Products in connection with Applicant's Mark, and state the period of time during which each company that, and/or person who, participated or participates in such activities.

RESPONSE TO INTERROGATORY NO. 21:

Applicant has not used Applicant's Mark in commerce.

INTERROGATORY NO. 22:

For each expert Applicant has retained to give testimony in this proceeding, provide the information required pursuant to Rule 26(a)(2)(B), Fed. R. Civ. P.

RESPONSE TO INTERROGATORY NO. 22:

Applicant has not presently retained any expert to give testimony in this proceeding

INTERROGATORY NO. 23:

State the basis for Applicant's *bona fide* intent to use Applicant's Mark in commerce on the date Applicant's representative signed the application that ultimately was assigned Serial Number 78/336,665 by the U.S. Patent and Trademark Office.

RESPONSE TO INTERROGATORY NO. 23:

Applicant objects to this interrogatory on the grounds that it calls for a legal determination as to the "basis for Applicant's *bona fide* intent to use."

INTERROGATORY NO. 24:

State the basis upon which Applicant believed, in applying for registration of Applicant's Mark based upon Applicant's *bona fide* intent to use the mark in commerce, that no other person had a right to use Applicant's Mark in commerce either in identical form thereof or in such near resemblance thereto as to be likely to cause confusion, mistake, and/or deception.

RESPONSE TO INTERROGATORY NO. 24:

Applicant objects to this interrogatory on the grounds that it calls for information protected by the attorney-client or work product privilege.

INTERROGATORY NO. 25:

Identify each different manner that Applicant's Mark has been used and/or is intended to be used (i.e., on or as part of containers (e.g., cans) for Applicant's Products, on packaging, on signage, on web pages, on printed advertising, and/or on promotional items).

RESPONSE TO INTERROGATORY NO. 25:

Applicant's Mark has not been used in commerce.

INTERROGATORY NO. 26:

Identify each person who supplied documents or information for, or who has participated in responding to, these Interrogatories, Opposer's First Request for Production of Documents and Things, and/or Opposer's First Requests for Admissions.

RESPONSE TO INTERROGATORY NO. 26:

Dan Rogozynski and Kenneth McKay.

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: November 18, 2005

By: 

Jeffrey L. Van Hoosear
2040 Main Street
Fourteenth Floor
Irvine, CA 92614
(949) 760-0404
Attorneys for Applicant,
The Sleeman Brewing & Malting Co. Ltd.

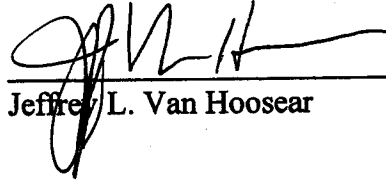
CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing **APPLICANT'S RESPONSES TO OPPOSER'S FIRST SET OF INTERROGATORIES (NOS. 1-26)** upon Opposer's counsel by depositing one copy thereof in the United States Mail, first class postage prepaid, on November 18, 2005, addressed as follows:

Jonathan Hudis
Kyoko Imai
OBLON, SPIVAK, MCCLELLAND
MAIER & NEUSTADT, P.C.
1940 Duke Street
Alexandria, Virginia 22314

Dated: _____

November 18, 2005



Jeffrey L. Van Hoosear

2028638:gv
102705

EXHIBIT G

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Heineken Brouwerijen B.V.,

Opposer,

v.

The Sleeman Brewing & Malting Co. LTD.,

Applicant.

Opposition No. 91166542

In the Matter of Trademark
Application Serial No.: 78/336,665

Mark: SLEEMAN CREAM ALE &
CAN DESIGN

**APPLICANT'S RESPONSES TO OPPOSER'S FIRST REQUEST
FOR PRODUCTION OF DOCUMENTS AND THINGS**

Pursuant to the Rules of Practice of the United States Patent and Trademark Office, Rule 34 of the Federal Rules of Civil Procedure and the Trademark Trial and Appeal Board Manual of Procedure ("TBMP"), Applicant The Sleeman Brewing & Malting Co. Ltd. ("Applicant") hereby responds to Applicant's First Set of Document Requests to Opposer as follows:

GENERAL STATEMENT

All document requests not objected to herein and all documents identified in response to said document requests will be made available to Opposer for inspection and copying at The Sleeman Brewing & Malting Co. Ltd., 551 Claire Road West, Guelph, Ontario, Canada. This inspection will be conducted at a time agreed upon by both parties.

GENERAL OBJECTIONS

The following general objections are incorporated by reference in response to each document request set forth below and are not waived with respect to any response:

1. Applicant generally objects to Opposer's document requests to the extent they seek disclosure of any information, document, or thing protected, privileged, or immune, or otherwise exempt from discovery pursuant to applicable state and federal statutes, the FRCP, case law, regulations, administrative orders, or any other applicable rules, decisions, or laws

including, but not limited to, documents protected by the attorney-client privilege, the work-product doctrine or any other applicable privilege.

2. Applicant generally objects to Opposer's document requests to the extent they purport to impose upon Applicant obligations greater than those imposed by the applicable FRCP, 37 C.F.R. § 2.120(d), or other applicable rules of law.

3. Applicant generally objects to Opposer's document requests to the extent that they seek information that is not calculated to lead to the discovery of admissible evidence or to the extent that Opposer's document requests seek the disclosure of information, documents or things beyond the scope of discovery as provided by the applicable FRCP, 37 C.F.R. § 2.120(d), or other applicable rules of law.

4. Applicant further objects to these document requests to the extent that they seek information or documents that contain Applicant's confidential and proprietary information or information protected by the right to privacy. The parties have not yet requested the Trademark Trial and Appeal Board (the "TTAB") to enter a protective order in this action. Thus, subject to objections and only upon entry of a suitable protective order, Applicant will make available such relevant, responsive, nonprivileged documents.

5. Applicant reserves the right to object to further inquiry with respect to the subject matter of the document requests and responses provided thereto.

6. Applicant objects to each of Opposer's document requests to the extent that they seek information that is a matter of public record or otherwise available to Opposer without imposing undue burden on Opposer.

7. Applicant objects to the document requests to the extent they seek documents outside of Applicant's possession, custody, or control.

8. Applicant further objects to the document requests to the extent that they call for a production of information, documents, or things that are protected from disclosure by agreements Applicant has with another entity, if any or obligations Applicant has to another entity, if any.

9. Applicant further objects to the document requests to the extent that they fail to describe the documents and things sought with a reasonable degree of specificity. Applicant will attempt to construe the terms and phrases used by Opposer in a way to give those terms and phrases a meaning that will result in the production of relevant information designed to lead to the discovery of admissible evidence.

10. Applicant further objects to the document requests to the extent they seek "all" documents or "each" document concerning a particular subject, on the grounds that Applicant would be required to conduct searches of undue breadth at undue burden and expense. In its search for relevant documents, Applicant has made, or will make, a reasonable search as required by the FRCP and 37 C.F.R. § 2.120(d).

11. As to all matters referred to in these responses to Opposer's document requests, investigation and discovery continues. Accordingly, Applicant reserves its right to modify these responses and to present in any proceedings and at trial any further information and documents obtained during discovery as well as during the testimony and trial periods in preparation for the testimony and trial periods. Further discovery, independent investigation, and legal research and analysis may supply additional facts adding meaning to known facts, as well as establish entirely new factual conclusions or legal conclusions, all of which may lead to substantial additions to changes in and variations from the responses set forth herein. Applicant reserves the right to produce any subsequently discovered evidence, facts, and/or documents, and to supplement or change its responses based on such information. The responses given herein are done so in a good faith effort to supply as much information as is presently known which should in no way lead to the prejudice of Opposer in connection with further discovery research or analysis.

12. Applicant generally objects to the terms "Opposer," "Applicant," "person," and "persons" as vague, overly broad and unduly burdensome.

13. The production of any documents will not constitute an admission by Applicant that such documents are relevant to the pending Opposition or a waiver of any other allowable objections. Accordingly, Applicant reserves the right to object to further inquiry with respect to the subject matter of the document requests and responses provided thereto.

14. "In commerce" was not defined in the First Request for Production of Documents and Things or in the First Set of Interrogatories which was incorporated therein by reference. The term "in commerce" will mean "in commerce" as defined in Section 45 of the Lanham Act.

15. As applicant is a foreign entity, it objects to requests which exceed the scope of this proceeding.

RESPONSES TO DOCUMENT REQUESTS

REQUEST FOR PRODUCTION NO. 1:

Produce each document and thing that Applicant identified in responding to Opposer's First Set of Interrogatories.

RESPONSE TO REQUEST FOR PRODUCTION NO. 1:

To the best of Applicant's knowledge no documents were identified in responding to Opposer's First Set of Interrogatories.

REQUEST FOR PRODUCTION NO. 2:

Produce each document and thing forming the basis for the denial, in whole or in part, with respect to each of Applicant's responses to Opposer's First Request for Admissions.

RESPONSE TO REQUEST FOR PRODUCTION NO. 2:

Applicant objects to this request on the basis that it is overly broad and burdensome. Notwithstanding the general and specific objections, certain documents identified in Opposer's First Request for Admissions and responsive to this request are already in the possession of Opposer.

REQUEST FOR PRODUCTION NO. 3:

Produce each document and thing regarding the creation, selection, and/or adoption or intended adoption of Applicant's Mark by or on behalf of Applicant.

RESPONSE TO REQUEST FOR PRODUCTION NO. 3:

Applicant objects to this request to the extent it calls for the production of documents protected by the attorney-client or work-product privilege. Notwithstanding the general and specific objections, any relevant, nonprivileged documents responsive to this request will be made available upon entry of a suitable protective order.

REQUEST FOR PRODUCTION NO. 4:

Produce each document and/or thing regarding any investigation such as a service mark, trademark, trade name, Internet name, or corporate name search regarding Applicant's actual and/or intended adoption, use, and/or application for federal registration of Applicant's Mark.

RESPONSE TO REQUEST FOR PRODUCTION NO. 4:

Applicant objects to this request to the extent that it is overly broad and unduly burdensome. Notwithstanding the general and specific objections, any relevant, nonprivileged documents responsive to this request will be made available as discussed herein.

REQUEST FOR PRODUCTION NO. 5:

Produce each document and thing regarding the date and/or anticipated date of first use anywhere, and the date and/or anticipated date of first use in commerce, of Applicant's Mark by or on behalf of Applicant.

RESPONSE TO REQUEST FOR PRODUCTION NO. 5:

Applicant objects that the language of this request is overly broad and unduly burdensome. Notwithstanding the general and specific objections, Applicant has not used Applicant's Mark in commerce. To the extent that any relevant, nonprivileged documents meet this request over these objections they will be made available as discussed herein.

REQUEST FOR PRODUCTION NO. 6:

Produce each document and thing demonstrating each type of product, container, and packaging in connection with which Applicant's Mark has been used and/or is proposed to be used.

RESPONSE TO REQUEST FOR PRODUCTION NO. 6:

Any relevant, nonprivileged documents responsive to this request will be made available upon entry of a suitable protective order.

REQUEST FOR PRODUCTION NO. 7:

Produce each document and thing regarding the geographical areas and channels of trade in which Applicant's Mark has been used, is used, and/or is proposed to be used.

RESPONSE TO REQUEST FOR PRODUCTION NO. 7:

Applicant objects to this request on the bases that it is overly broad and unduly burdensome and also pertains to geographic areas and channels of trade outside the United States and therefore not relevant to this proceeding. Notwithstanding the general and specific objections, any relevant, nonprivileged documents responsive to this request will be made available upon entry of a suitable protective order.

REQUEST FOR PRODUCTION NO. 8:

Produce each document and thing regarding each actual and/or intended assignment, consent, authorization, license and/or permission to use Applicant's Mark and/or Applicant's Products, including each modified version thereof.

RESPONSE TO REQUEST FOR PRODUCTION NO. 8:

Applicant has not used Applicant's Mark in commerce nor has it assigned, consented, authorized, licensed, or permitted others to use Applicant's Mark in the United States. Therefore there are no relevant documents of this type to produce. To the extent that this request ask for documents and things regarding each actual and/or intended assignment, consent, authorization, license, and/or permission to use Applicant's Products, Applicant objects on the grounds that it is overly broad, unduly burdensome, and not directed toward information likely to lead to discoverable subject matter. Notwithstanding the general and specific objections, any relevant, nonprivileged documents responsive to this request will be made available upon entry of a suitable protective order.

REQUEST FOR PRODUCTION NO. 9:

Produce representative specimens of each different container, item of packaging and/or labeling materials for Applicant's Products that bear and/or will bear Applicant's Mark, including each prototype, draft or sketch for said container, packaging or labeling, and produce each document and/or thing regarding the design or creation of said container, packaging or labeling.

RESPONSE TO REQUEST FOR PRODUCTION NO. 9:

Applicant is not presently aware of any documents responsive to this request.

REQUEST FOR PRODUCTION NO. 10:

Produce representative specimens of the current and/or proposed advertising and/or promotional documents and electronic media that bear or will bear Applicant's Mark, used or to be used by or on behalf of Applicant.

RESPONSE TO REQUEST FOR PRODUCTION NO. 10:

Any relevant, nonprivileged documents responsive to this request will be made available upon entry of a suitable protective order.

REQUEST FOR PRODUCTION NO. 11:

Produce each document and/or thing regarding each print and/or electronic media publication in which Applicant has advertised or promoted, is advertising or promoting, or plans to advertise or promote its Applicant's Products in connection with Applicant's Mark.

RESPONSE TO REQUEST FOR PRODUCTION NO. 11:

Applicant objects to this request to the extent that it calls for Applicant's future plans. As to print and/or electronic media publications in which Applicant has advertised or promoted or is advertising or promoting, Applicant is not presently aware of any relevant documents responsive to this request. Applicant has not used Applicant's Mark in commerce.

REQUEST FOR PRODUCTION NO. 12:

Produce each document and/or thing regarding types of customers with whom Applicant does or intends to do business, and the ultimate consumers to whom Applicant offers or intends to offer Applicant's Products that bear or will bear Applicant's Mark.

RESPONSE TO REQUEST FOR PRODUCTION NO. 12:

Applicant objects to this request on the basis that it is overly broad and burdensome. Notwithstanding the general and specific objections, any relevant, nonprivileged documents responsive to this request will be made available upon entry of a suitable protective order.

REQUEST FOR PRODUCTION NO. 13:

Produce copies of each survey, market research test, demographic or consumer profile study, and/or focus group inquiry regarding ultimate purchasers or potential purchasers of Applicant's Products actually or intended to be sold, offered for sale, advertised or promoted under Applicant's Mark, including the results thereof.

RESPONSE TO REQUEST FOR PRODUCTION NO. 13:

Any relevant, nonprivileged documents responsive to this request will be made available upon entry of a suitable protective order. Applicant is not presently aware of any documents responsive to this request.

REQUEST FOR PRODUCTION NO. 14:

Produce each document and/or thing regarding the dollar value of Applicant's actual and/or projected sales of products that bear or will bear Applicant's Mark since the date of first use or intended first use of the mark.

RESPONSE TO REQUEST FOR PRODUCTION NO. 14:

Applicant has not used Applicant's Mark in commerce, and, as such, Applicant is not aware of any relevant documents responsive to this request.

REQUEST FOR PRODUCTION NO. 15:

Produce each document and/or thing regarding the amount of money expended and/or budgeted by Applicant to promote Applicant's Products that bear or will bear Applicant's Mark since the date of first use or intended first use of Applicant's Mark.

RESPONSE TO REQUEST FOR PRODUCTION NO. 15:

Any relevant, nonprivileged documents responsive to this request will be made available upon entry of a suitable protective order.

REQUEST FOR PRODUCTION NO. 16:

Produce each document and/or thing regarding the date and circumstances under which Applicant became aware of the use and/or registration of Opposer's Mark prior to Applicant's intention or decision to adopt, use, or apply for federal registration of Applicant's Mark.

RESPONSE TO REQUEST FOR PRODUCTION NO. 16:

Applicant objects to this request on the basis that it is overly broad and burdensome. Notwithstanding the general and specific objections, any relevant, nonprivileged documents responsive to this request will be made available upon entry of a suitable protective order.

REQUEST FOR PRODUCTION NO. 17:

Produce each document and/or thing regarding each action taken by Applicant in response to its awareness of Opposer's Mark.

RESPONSE TO REQUEST FOR PRODUCTION NO. 17:

Applicant objects to this request on the basis that it is overly broad, burdensome, vague and ambiguous. Any relevant, nonprivileged documents responsive to this request will be made available upon entry of a suitable protective order.

REQUEST FOR PRODUCTION NO. 18:

Produce each comparison study, survey, market research test, and each document and/or thing thereto related, including results thereof, regarding the actual and/or intended advertisements, promotions, distributions, and/or sales of Applicant's Products in connection with Applicant's Mark and the advertisements, promotions, distributions, and/or sales of Opposer's Products in connection with Opposer's Mark, including, without limitation, those regarding actual confusion, likelihood of confusion, initial interest (pre-sale) confusion, and/or deception as to the source of Applicant's Products and/or Opposer's Products.

RESPONSE TO REQUEST FOR PRODUCTION NO. 18:

Any relevant, nonprivileged documents responsive to this request will be made available upon entry of a suitable protective order. Applicant is not presently aware of any documents responsive to this request.

REQUEST FOR PRODUCTION NO. 19:

Produce each document and/or thing regarding each instance in which a person has been confused, mistaken, and/or deceived as to the source of Applicant's Products advertised, promoted, offered for sale, and/or sold under Applicant's Mark, and the source of Opposer's Products advertised, promoted, offered for sale, and/or sold under Opposer's Mark.

RESPONSE TO REQUEST FOR PRODUCTION NO. 19:

Any relevant, nonprivileged documents responsive to this request will be made available upon entry of a suitable protective order. Applicant is not presently aware of any documents responsive to this request.

REQUEST FOR PRODUCTION NO. 20:

For each expert Applicant intends to call to provide testimony in this proceeding, produce:

- a) each written report provided by said expert regarding the subject matter of this proceeding;
- b) a complete written statement of each opinion to be expressed by the expert in this proceeding, and the basis and reasons therefor;
- c) each document reflecting the data or other information considered by the expert in forming his/her opinions;
- d) each exhibit to be used by the expert as a summary of or support for his/her opinions;
- e) documents stating the qualifications of the expert, such as would be reflected in a resume, curriculum vitae, biography, summary or otherwise;
- f) a written list of each publication authored by the witness within the last ten years;
- g) documents reflecting the compensation to be paid for the expert's preparation time and time taken to provide testimony; and
- h) a written list of each case in which the witness testified as an expert at trial, in an administrative proceeding or by deposition within the past four years.

RESPONSE TO REQUEST FOR PRODUCTION NO. 20:

Applicant has not presently retained any expert to give testimony in this proceeding.

REQUEST FOR PRODUCTION NO. 21:

Produce each document regarding a charge of infringement brought by Applicant against another person or brought by another person against Applicant regarding the use and/or intended use of Applicant's Mark.

RESPONSE TO REQUEST FOR PRODUCTION NO. 21:

Any relevant, nonprivileged documents responsive to this request will be made available upon entry of a suitable protective order. Applicant is not presently aware of any documents that meet this request.

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: November 18, 2005

By: _____

Jeffrey L. Van Hoosear

2040 Main Street

Fourteenth Floor

Irvine, CA 92614

(949) 760-0404

Attorneys for Applicant,

The Sleeman Brewing & Malting Co. Ltd.

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing **APPLICANT'S RESPONSES TO OPPOSER'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS AND THINGS** upon Opposer's counsel by depositing one copy thereof in the United States Mail, first class postage prepaid, on November 18, 2005, addressed as follows:

Jonathan Hudis
Kyoko Imai
OBLON, SPIVAK, MCCLELLAND
MAIER & NEUSTADT, P.C.
1940 Duke Street
Alexandria, Virginia 22314

Dated: _____

November 18, 2005

Jeffrey L. Van Hoosear

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EXHIBIT H

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Heineken Brouwerijen B.V.,

Opposer,

v.

The Sleeman Brewing & Malting Co. LTD.,

Applicant.

Opposition No. 91166542

In the Matter of Trademark
Application Serial No.: 78/336,665

Mark: SLEEMAN CREAM ALE &
CAN DESIGN

**APPLICANT'S RESPONSES TO OPPOSER'S FIRST
REQUEST FOR ADMISSIONS**

Pursuant to the Rules of Practice of the United States Patent and Trademark Office, Rule 36 of the Federal Rules of Civil Procedure and the Trademark Trial and Appeal Board Manual of Procedure ("TBMP"), Applicant The Sleeman Brewing & Malting Co. Ltd. ("Applicant") hereby responds to Opposer's First Set of Requests for Admissions subject to the following general objections:

GENERAL OBJECTIONS

The following general objections are incorporated by reference in response to each request set forth below and are not waived with respect to any response:

1. Applicant objects generally to the instructions and definitions of Opposer's First Request for Admissions to the extent that those instructions and definitions fail to comply with or impose obligations in excess of the Federal Rules of Civil Procedure.
2. Applicant objects to Opposer's First Set of Requests for Admissions to the extent that they call for information protected by the attorney-client privilege, the attorney work product immunity or other applicable privilege.
3. Applicant objects to each request to the extent that it seeks information that is irrelevant and not calculated to lead to the discovery of admissible evidence.

4. Applicant objects to each request to the extent that it calls for confidential and proprietary business information. To the extent that the response calls for relevant confidential and proprietary information, Applicant will provide such information only under a suitable protective order signed by both parties and entered by the Trademark Trial and Appeal Board.

5. Applicant objects to each request to the extent that the request, or a portion of the request, is vague, ambiguous or undefined.

6. Applicant's investigation and discovery are still continuing and Applicant reserves the right to use in this Opposition and at the hearing any evidence or information inadvertently omitted from these responses and/or later obtained.

7. "In commerce" was not defined in the First Request for Admissions or the First Set of Interrogatories incorporated therein by reference. The term "in commerce" will mean "in commerce" as defined in Section 45 of the Lanham Act.

8. As applicant is a foreign entity, it objects to requests which exceed the scope of this proceeding.

RESPONSES TO THE REQUEST FOR ADMISSIONS

REQUEST FOR ADMISSION NO. 1:

Admit that it has not used Applicant's Mark in commerce.

RESPONSE TO REQUEST FOR ADMISSION NO. 1:

Applicant admits that it has not used Applicant's Mark in commerce.

REQUEST FOR ADMISSION NO. 2:

Admit that Applicant does not intend to use Applicant's Mark in commerce.

RESPONSE TO REQUEST FOR ADMISSION NO. 2:

Subject to the General Objections, Applicant denies this request.

REQUEST FOR ADMISSION NO. 3:

Admit that Applicant has not used Applicant's Mark in connection with Applicant's Products in commerce.

RESPONSE TO REQUEST FOR ADMISSION NO. 3:

Applicant admits that it has not used Applicant's Mark in commerce in connection with Applicant's Products.

REQUEST FOR ADMISSION NO. 4:

Admit that Applicant does not intend to use Applicant's Mark in connection with Applicant's Products in commerce.

RESPONSE TO REQUEST FOR ADMISSION NO. 4:

Subject to the General Objections, Applicant denies this request.

REQUEST FOR ADMISSION NO. 5:

Admit that Applicant has used Applicant's Mark in commerce.

RESPONSE TO REQUEST FOR ADMISSION NO. 5:

Subject to the General Objections, Applicant denies this request.

REQUEST FOR ADMISSION NO. 6:

Admit that Applicant intends to use Applicant's Mark in commerce.

RESPONSE TO REQUEST FOR ADMISSION NO. 6:

Applicant admits that it intends to use Applicant's Mark in commerce.

REQUEST FOR ADMISSION NO. 7:

Admit that Applicant has used Applicant's Mark in connection with Applicant's Products in commerce.

RESPONSE TO REQUEST FOR ADMISSION NO. 7:

Subject to the General Objections, Applicant denies this request.

REQUEST FOR ADMISSION NO. 8:

Admit that Applicant intends to use Applicant's Mark in connection with Applicant's Products in commerce.

RESPONSE TO REQUEST FOR ADMISSION NO. 8:

Applicant admits that it intends to use Applicant's Mark in commerce in connection with Applicant's Products.

REQUEST FOR ADMISSION NO. 9:

Admit that Applicant's Products may be promoted to consumers of varying degrees of sophistication.

RESPONSE TO REQUEST FOR ADMISSION NO. 9:

Applicant lacks sufficient information or belief to admit or deny the assertions contained in this request. Subject to and without waiving the general and specific objections set forth above, Applicant denies this request.

REQUEST FOR ADMISSION NO. 10:

Admit that Applicant's Products may be sold to consumers of varying degrees of sophistication.

RESPONSE TO REQUEST FOR ADMISSION NO. 10:

Applicant lacks sufficient information or belief to admit or deny the assertions contained in this request. Subject to and without waiving the general and specific objections set forth above, Applicant denies this request.

REQUEST FOR ADMISSION NO. 11:

Admit that Application Serial Number 78/336,665 for Applicant's Mark does not limit the goods set forth in the application to any particular trade channels.

RESPONSE TO REQUEST FOR ADMISSION NO. 11:

Applicant objects to this request on the grounds that the Application Serial Number 78/336,665 is a matter of public record. Subject to this and General Objections, Applicant admits that Application Serial Number 78/336,665 for Applicant's Mark does not presently limit the goods set forth in the application to any particular trade channels.

REQUEST FOR ADMISSION NO. 12:

Admit that Application Serial Number 78/336,665 for Applicant's Mark does not limit the goods set forth in the application to any particular class of customers.

RESPONSE TO REQUEST FOR ADMISSION NO. 12:

Applicant objects to this request on the grounds that the Application Serial Number 78/336,665 is a matter of public record. Subject to this and General Objections, Applicant admits that Application Serial Number 78/336,665 for Applicant's Mark does not presently limit the goods set forth in the application to any particular class of customers.

REQUEST FOR ADMISSION NO. 13:

Admit that a trademark search for Applicant's Mark was conducted on Applicant's behalf before the Mark was adopted.

RESPONSE TO REQUEST FOR ADMISSION NO. 13:

Subject to the General Objections, Applicant denies this request.

REQUEST FOR ADMISSION NO. 14:

Admit that a trademark search for Applicant's Mark was conducted on Applicant's behalf before the date of first use of Applicant's Mark.

RESPONSE TO REQUEST FOR ADMISSION NO. 14:

Subject to the General Objections, Applicant denies this request.

REQUEST FOR ADMISSION NO. 15:

Admit that a trademark search for Applicant's Mark was conducted on Applicant's behalf before the anticipated date of first use of Applicant's Mark.

RESPONSE TO REQUEST FOR ADMISSION NO. 15:

Subject to the General Objections, Applicant denies this request.

REQUEST FOR ADMISSION NO. 16:

Admit that a trademark search for Applicant's Mark was conducted on Applicant's behalf before Applicant filed its application to federally register Applicant's Mark.

RESPONSE TO REQUEST FOR ADMISSION NO. 16:

Subject to the General Objections, Applicant denies this request.

REQUEST FOR ADMISSION NO. 17:

Admit that no trademark search for Applicant's Mark was conducted by any person on Applicant's behalf before Applicant adopted the mark.

RESPONSE TO REQUEST FOR ADMISSION NO. 17:

Applicant admits that no trademark search for Applicant's Mark was conducted in the United States by any person on Applicant's behalf before Applicant adopted the mark.

REQUEST FOR ADMISSION NO. 18:

Admit that no trademark search for Applicant's Mark was conducted by any person on Applicant's behalf before the date of first use of Applicant's Mark.

RESPONSE TO REQUEST FOR ADMISSION NO. 18:

Applicant admits that no trademark search for Applicant's Mark was conducted in the United States by any person on Applicant's behalf before the date of first use of Applicant's Mark.

REQUEST FOR ADMISSION NO. 19:

Admit that no trademark search for Applicant's Mark was conducted by any person on Applicant's behalf before the anticipated date of first use of Applicant's Mark.

RESPONSE TO REQUEST FOR ADMISSION NO. 19:

Applicant admits that no trademark search for Applicant's Mark was conducted in the United States by any person on Applicant's behalf before the anticipated date of first use of Applicant's Mark.

REQUEST FOR ADMISSION NO. 20:

Admit that no trademark search for Applicant's Mark was conducted by any person on Applicant's behalf before Applicant filed its application to Federally register the mark.

RESPONSE TO REQUEST FOR ADMISSION NO. 20:

Applicant admits that no trademark search for Applicant's Mark was conducted in the United States by any person on Applicant's behalf before Applicant filed its application to federally register the mark.

REQUEST FOR ADMISSION NO. 21:

Admit that Applicant knew about the use of Opposer's Mark before adopting Applicant's Mark.

RESPONSE TO REQUEST FOR ADMISSION NO. 21:

At this time Applicant is without sufficient information to admit or deny, and so Applicant denies this request.

REQUEST FOR ADMISSION NO. 22:

Admit that Applicant knew about the use of Opposer's Mark before the anticipated date of first use of Applicant's Mark.

RESPONSE TO REQUEST FOR ADMISSION NO. 22:

Applicant admits that it has not yet used Applicant's Mark in the United States and that it is currently aware that Opposer's claim rights in Opposer's Mark.

REQUEST FOR ADMISSION NO. 23:

Admit that Applicant knew about the use of Opposer's Mark before the date of first use of Applicant's Mark.

RESPONSE TO REQUEST FOR ADMISSION NO. 23:

Applicant objects to this request on the grounds that it filed its application as an intent-to-use application and this question is thus ambiguous or nonsensical. Subject to this and the General Objections, Applicant denies this request.

REQUEST FOR ADMISSION NO. 24:

Admit that Applicant knew about the use of Opposer's Mark before filing its application to Federally register Applicant's Mark.

RESPONSE TO REQUEST FOR ADMISSION NO. 24:

At this time Applicant is without sufficient information to admit or deny, and so Applicant denies this request.

REQUEST FOR ADMISSION NO. 25:

Admit that Applicant knew about sales of Opposer's Products before Applicant adopted Applicant's Mark.

RESPONSE TO REQUEST FOR ADMISSION NO. 25:

Applicant objects to the relevance of this request. Subject to this and the General Objections, Applicant admits that it knew Opposer sold beer prior to adopting Applicant's Mark.

REQUEST FOR ADMISSION NO. 26:

Admit that Applicant knew about sales of Opposer's Products before the date of first use of Applicant's Mark.

RESPONSE TO REQUEST FOR ADMISSION NO. 26:

Applicant objects to the relevance of this request. Subject to this and the General Objections, Applicant admits that it knew about Opposer's sale of beer before the date of first use of Applicant's Mark.

REQUEST FOR ADMISSION NO. 27:

Admit that Applicant knew about sales of Opposer's Products before the anticipated date of first use of Applicant's Mark.

RESPONSE TO REQUEST FOR ADMISSION NO. 27:

Applicant objects to the relevance of this request. Subject to this and the General Objections, Applicant admits that it knew about Opposer's sale of beer before the date of first use of Applicant's Mark.

REQUEST FOR ADMISSION NO. 28:

Admit that Applicant knew about sales of Opposer's Products before filing an application to Federally register Applicant's Mark.

RESPONSE TO REQUEST FOR ADMISSION NO. 28:

Applicant objects to the relevance of this request. Subject to this and the General Objections, Applicant admits that it knew about Opposer's sale of beer before the date of first use of Applicant's Mark.

REQUEST FOR ADMISSION NO. 29:

Admit that Applicant's Mark is confusingly similar to Opposer's Mark.

RESPONSE TO REQUEST FOR ADMISSION NO. 29:

Subject to the General Objections, Applicant denies this request.

REQUEST FOR ADMISSION NO. 30:

Admit that Applicant's Mark appears confusingly similar to Opposer's Mark.

RESPONSE TO REQUEST FOR ADMISSION NO. 30:

Subject to the General Objections, Applicant denies this request.

REQUEST FOR ADMISSION NO. 31:

Admit that Applicant's Mark evokes a commercial impression that is confusingly similar to Opposer's Mark.

RESPONSE TO REQUEST FOR ADMISSION NO. 31:

Subject to the General Objections, Applicant denies this request.

REQUEST FOR ADMISSION NO. 32:

Admit that Applicant is aware of an instance in which a beer consumer has experienced actual confusion between Applicant's Products and Opposer's Products.

RESPONSE TO REQUEST FOR ADMISSION NO. 32:

Subject to the General Objections, Applicant denies this request.

REQUEST FOR ADMISSION NO. 33:

Admit that Applicant is aware of an instance in which a beer consumer has experienced actual confusion between Applicant's Mark and Opposer's Mark.

RESPONSE TO REQUEST FOR ADMISSION NO. 33:

Subject to the General Objections, Applicant denies this request.

REQUEST FOR ADMISSION NO. 34:

Admit that Applicant is aware of an instance in which a beer distributor has experienced actual confusion between Applicant's Products and Opposer's Products.

RESPONSE TO REQUEST FOR ADMISSION NO. 34:

Subject to the General Objections, Applicant denies this request

REQUEST FOR ADMISSION NO. 35:

Admit that Applicant is aware of an instance in which a beer distributor has experienced actual confusion between Applicant's Mark and Opposer's Mark.

RESPONSE TO REQUEST FOR ADMISSION NO. 35:

Subject to the General Objections, Applicant denies this request.

REQUEST FOR ADMISSION NO. 36:

Admit that Applicant is aware of an instance in which a beer purchaser has experienced actual confusion between Applicant's Products and Opposer's Products.

RESPONSE TO REQUEST FOR ADMISSION NO. 36:

Subject to the General Objections, Applicant denies this request.

REQUEST FOR ADMISSION NO. 37:

Admit that Applicant is aware of an instance in which a beer purchaser has experienced actual confusion between Applicant's Mark and Opposer's Mark.

RESPONSE TO REQUEST FOR ADMISSION NO. 37:

Subject to the General Objections, Applicant denies this request.

REQUEST FOR ADMISSION NO. 38:

Admit that Applicant is aware of an instance in which a beer consumer has experienced initial interest (pre-sale) confusion between Applicant's Products and Opposer's Products.

RESPONSE TO REQUEST FOR ADMISSION NO. 38:

Subject to the General Objections, Applicant denies this request.

REQUEST FOR ADMISSION NO. 39:

Admit that Applicant is aware of an instance in which a beer consumer has experienced initial interest (pre-sale) confusion between Applicant's Mark and Opposer's Mark.

RESPONSE TO REQUEST FOR ADMISSION NO. 39:

Subject to the General Objections, Applicant denies this request.

REQUEST FOR ADMISSION NO. 40:

Admit that Applicant is aware of an instance in which a beer distributor has experienced initial interest (pre-sale) confusion between Applicant's Products and Opposer's Products.

RESPONSE TO REQUEST FOR ADMISSION NO. 40:

Subject to the General Objections, Applicant denies this request.

REQUEST FOR ADMISSION NO. 41:

Admit that Applicant is aware of an instance in which a beer distributor has experienced initial interest (pre-sale) confusion between Applicant's Mark and Opposer's Mark.

RESPONSE TO REQUEST FOR ADMISSION NO. 41:

Subject to the General Objections, Applicant denies this request.

REQUEST FOR ADMISSION NO. 42:

Admit that Applicant is aware of an instance in which a beer purchaser has experienced initial interest (pre-sale) confusion between Applicant's Products and Opposer's Products.

RESPONSE TO REQUEST FOR ADMISSION NO. 42:

Subject to the General Objections, Applicant denies this request.

REQUEST FOR ADMISSION NO. 43:

Admit that Applicant is aware of an instance in which a beer purchaser has experienced initial interest (pre-sale) confusion between Applicant's Mark and Opposer's Mark.

RESPONSE TO REQUEST FOR ADMISSION NO. 43:

Subject to the General Objections, Applicant denies this request.

REQUEST FOR ADMISSION NO. 44:

Admit that Applicant is aware of an instance in which a beer consumer has been mistaken as between the source of Applicant's Products and the source of Opposer's Products.

RESPONSE TO REQUEST FOR ADMISSION NO. 44:

Subject to the General Objections, Applicant denies this request.

REQUEST FOR ADMISSION NO. 45:

Admit that Applicant is aware of an instance in which a beer consumer has been mistaken as between the source of Applicant's Mark and the source of Opposer's Mark.

RESPONSE TO REQUEST FOR ADMISSION NO. 45:

Subject to the General Objections, Applicant denies this request.

REQUEST FOR ADMISSION NO. 46:

Admit that Applicant is aware of an instance in which a beer distributor has been mistaken as between the source of Applicant's Products and the source of Opposer's Products.

RESPONSE TO REQUEST FOR ADMISSION NO. 46:

Subject to the General Objections, Applicant denies this request.

REQUEST FOR ADMISSION NO. 47:

Admit that Applicant is aware of an instance in which a beer distributor has been mistaken as between the source of Applicant's Mark and the source of Opposer's Mark.

RESPONSE TO REQUEST FOR ADMISSION NO. 47:

Subject to the General Objections, Applicant denies this request.

REQUEST FOR ADMISSION NO. 48:

Admit that Applicant is aware of an instance in which beer purchaser has been mistaken as between the source of Applicant's Products and the source of Opposer's Products.

RESPONSE TO REQUEST FOR ADMISSION NO. 48:

Subject to the General Objections, Applicant denies this request.

REQUEST FOR ADMISSION NO. 49:

Admit that Applicant is aware of an instance in which a beer purchaser has been mistaken as between the source of Applicant's Mark and the source of Opposer's Mark.

RESPONSE TO REQUEST FOR ADMISSION NO. 49:

Subject to the General Objections, Applicant denies this request.

REQUEST FOR ADMISSION NO. 50:

Admit that Applicant is aware of an instance in which a beer consumer has been deceived as between the source of Applicant's Goods and the source of Opposer's Goods.

RESPONSE TO REQUEST FOR ADMISSION NO. 50:

Subject to the General Objections, Applicant denies this request.

REQUEST FOR ADMISSION NO. 51:

Admit that Applicant is aware of an instance in which a beer consumer has been deceived as between the source of Applicant's Mark and the source of Opposer's Mark.

RESPONSE TO REQUEST FOR ADMISSION NO. 51:

Subject to the General Objections, Applicant denies this request.

REQUEST FOR ADMISSION NO. 52:

Admit that Applicant is aware of an instance in which a beer distributor has been deceived as between the source of Applicant's Goods and the source of Opposer's Goods.

RESPONSE TO REQUEST FOR ADMISSION NO. 52:

Subject to the General Objections, Applicant denies this request.

REQUEST FOR ADMISSION NO. 53:

Admit that Applicant is aware of an instance in which a beer distributor has been deceived as between the source of Applicant's Mark and the source of Opposer's Mark.

RESPONSE TO REQUEST FOR ADMISSION NO. 53:

Subject to the General Objections, Applicant denies this request.

REQUEST FOR ADMISSION NO. 54:

Admit that Applicant is aware of an instance in which a beer purchaser has been deceived as between the source of Applicant's Goods and the source of Opposer's Goods.

RESPONSE TO REQUEST FOR ADMISSION NO. 54:

Subject to the General Objections, Applicant denies this request.

REQUEST FOR ADMISSION NO. 55:

Admit that Applicant is aware of an instance in which a beer purchaser has been deceived as between the source of Applicant's Mark and the source of Opposer's Mark.

RESPONSE TO REQUEST FOR ADMISSION NO. 55:

Subject to the General Objections, Applicant denies this request.

REQUEST FOR ADMISSION NO. 56:

Admit that attached as Exhibit 1 is a true and accurate copy of the file history for Application Serial Number 78/336,665.

RESPONSE TO REQUEST FOR ADMISSION NO. 56:

Applicant objects to this request on the grounds that the term "file history" is not defined. Subject to this and the General Objections, Applicant denies this request.

REQUEST FOR ADMISSION NO. 57:

Admit that Applicant promotes Applicant's Products via the Internet.

RESPONSE TO REQUEST FOR ADMISSION NO. 57:

Applicant admits that Applicant may promote certain of Applicant's Products via the Internet.

REQUEST FOR ADMISSION NO. 58:

Admit that Applicant intends to promote Applicant's Products via the Internet.

RESPONSE TO REQUEST FOR ADMISSION NO. 58:

Applicant admits that Applicant intends to promote certain of Applicant's Products via the Internet.

REQUEST FOR ADMISSION NO. 59:

Admit that on December 2, 2003, Don Rogozynski signed the Declaration that supports Application Serial No. 78/336,665.

RESPONSE TO REQUEST FOR ADMISSION NO. 59:

Applicant admits that on December 2, 2003, Don Rogozynski signed a declaration that supports Application Serial No. 78/336,665.

REQUEST FOR ADMISSION NO. 60:

Admit that the Declaration filed on December 4, 2003, supporting Application Serial No. 78/336,665, does not state that Applicant has a bona fide intention to use the mark.

RESPONSE TO REQUEST FOR ADMISSION NO. 60:

Subject to the General Objections, Applicant denies this request.

REQUEST FOR ADMISSION NO. 61:

Admit that Jeffrey L. Van Hoosear signed the Declaration which forms a part of Applicant's Response to Office Action filed on December 23, 2004.

RESPONSE TO REQUEST FOR ADMISSION NO. 61:

Applicant admits that Jeffrey L. Van Hoosear signed a declaration forming a part of Applicant's Response to Office Action filed on December 23, 2004.

REQUEST FOR ADMISSION NO. 62:

Admit that on December 23, 2004, Jeffrey L. Van Hoosear declared that "applicant has a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the identified goods and/or services as of the filing date of the application."

RESPONSE TO REQUEST FOR ADMISSION NO. 62:

Applicant objects to this request on the grounds that the response dated December 23, 2004, is part of the record and this request is unnecessary and improper. Subject to this and the General Objections, Applicant admits that the office action response submitted by Jeffrey L. Van Hoosear contains the statement that "applicant has a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the identified goods and/or services as of the filing date of the application."

REQUEST FOR ADMISSION NO. 63:

Admit that in Applicant's Response to Office Action filed on December 23, 2004, it states: "Applicant's mark is a two-dimensional representation of a can shaped like a beer barrel and featuring the distinct work [sic] SLEEMAN and the distinctive Sleeman Logo."

RESPONSE TO REQUEST FOR ADMISSION NO. 63:

Applicant objects to this request on the grounds that the office action response dated December 23, 2004, is part of the record and this request is unnecessary and improper. Subject to this and the General Objections, Applicant admits that Applicant's Response to Office Action filed on December 23, 2004, states: "Applicant's mark is a two-dimensional representation of a can shaped like a beer barrel and featuring the distinct work [sic] SLEEMAN and the distinctive Sleeman Logo."

REQUEST FOR ADMISSION NO. 64:

Admit that Applicant's Products bearing Applicant's Mark are sold in cans shaped like a beer barrel.

RESPONSE TO REQUEST FOR ADMISSION NO. 64:

Applicant objects to this request on the basis that it is nonsensical. Applicant's Mark is the subject of an intent-to-use application and is for a two-dimensional mark. Applicant's Products may or may not "bear" the mark. Subject to this and the General Objections, Applicant denies this request.

REQUEST FOR ADMISSION NO. 65:

Admit that Applicant's Products bearing Applicant's Mark are not sold in cans shaped like a beer barrel.

RESPONSE TO REQUEST FOR ADMISSION NO. 65:

Applicant objects to this request on the basis that it is nonsensical. Applicant's Mark is the subject of an intent-to-use application and is for a two-dimensional mark. Applicant's Products may or may not "bear" the mark. Subject to this and the General Objections, Applicant denies this request.

REQUEST FOR ADMISSION NO. 66:

Admit that Exhibit 2, attached hereto, is not a two-dimensional representation of a container for Applicant's Product bearing Applicant's Mark.

RESPONSE TO REQUEST FOR ADMISSION NO. 66:

Subject to the General Objections, Applicant also objects to this request as being nonsensical for the reasons set forth in the response to Request for Admission No. 65 above.

REQUEST FOR ADMISSION NO. 67:

Admit that Exhibit 2, attached hereto, is a two-dimensional representation of a container for Applicant's Product bearing Applicant's Mark.

RESPONSE TO REQUEST FOR ADMISSION NO. 67:

Subject to the General Objections, Applicant also objects to this request as being nonsensical for the reasons set forth in the response to Request for Admission No. 65 above.

REQUEST FOR ADMISSION NO. 68:

Admit that the shape of the can depicted in Exhibit 2 is shaped like a beer barrel.

RESPONSE TO REQUEST FOR ADMISSION NO. 68:

Subject to the General Objections, Applicant also objects to this request as being nonsensical for the reasons set forth in the response to Request for Admission No. 65 above.

REQUEST FOR ADMISSION NO. 69:

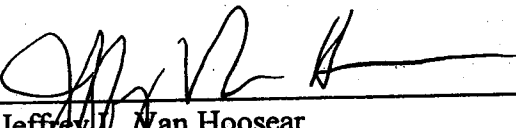
Admit that the shape of the container depicted in Exhibit 2 is shaped like a beer barrel.

RESPONSE TO REQUEST FOR ADMISSION NO. 69:

Subject to the General Objections, Applicant also objects to this request as being nonsensical for the reasons set forth in the response to Request for Admission No. 65 above.

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: March 18, 2005

By: 
Jeffrey L. Van Hoosear
2040 Main Street
Fourteenth Floor
Irvine, CA 92614
(949) 760-0404
Attorneys for Applicant,
The Sleeman Brewing & Malting Co. Ltd.

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing **APPLICANT'S RESPONSES TO OPPOSER'S FIRST REQUEST FOR ADMISSIONS** upon Opposer's counsel by depositing one copy thereof in the United States Mail, first class postage prepaid, on November 18, 2005, addressed as follows:

Jonathan Hudis
Kyoko Imai
OBLON, SPIVAK, MCCLELLAND
MAIER & NEUSTADT, P.C.
1940 Duke Street
Alexandria, Virginia 22314

Dated: _____

November 18, 2005

Jeffrey L. Van Hoosear

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